

University of Michigan Law School Grading System

Honor Points or Definitions

| Through Winter Term 1993 | Beginning Summer Term 1993 |
|--------------------------|----------------------------|
| A+ 4.5 | A+ 4.3 |
| A 4.0 | A 4.0 |
| B+ 3.5 | A- 3.7 |
| B 3.0 | B+ 3.3 |
| C+ 2.5 | B 3.0 |
| C 2.0 | B- 2.7 |
| D+ 1.5 | C+ 2.3 |
| D 1.0 | C 2.0 |
| E 0 | C- 1.7 |
| | D+ 1.3 |
| | D 1.0 |
| | E 0 |

Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- * A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499



Academic Transcript

009142693 Jordane J. Schooley
Jun 02, 2020 09:32 am

This is not an official transcript. Courses which are in progress may also be included on this transcript.

[Transfer Credit](#) [Institution Credit](#) [Transcript Totals](#)

Transcript Data

STUDENT INFORMATION

Birth Date: 04-APR-****

Curriculum Information

Program

Bachelor of Arts

Program: Bachelor of Arts

College: College of Arts & Sciences

Campus: Main Campus

Major and Department: Sociology, Sociology

Major Concentration: Social Justice

Minor: Peacebuilding
SocialInnovation

***Transcript type:Web Unofficial transcript is NOT Official ***

DEGREE AWARDED

Approved by Bachelor of Arts **Degree Date:**

Advisor/Dept

Chair:

Departmental Honors Program, Sociology

Honors:

Curriculum Information

Primary Degree

Program: Bachelor of Arts

College: College of Arts & Sciences

Campus: Main Campus

Major: Sociology

Major Concentration: Social Justice

Minor: Peacebuilding SocialInnovation

TRANSFER CREDIT ACCEPTED BY INSTITUTION [-Top-](#)

1: Advanced Placement Exam

| Subject | Course | Title | Grade | Quality Points | R |
|---------|--------|-------|-------|----------------|---|
|---------|--------|-------|-------|----------------|---|

| | | | | Credit Hours | | | |
|---------------|-----|-----------------|--------------|--------------|-----------|----------------|------------|
| ELCT | 294 | Elective credit | TP | 3.000 | | 0.0 | |
| | | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA Points |
| Current Term: | | 3.000 | 0.000 | 3.000 | 0.000 | 0.0 | 0.00 |

Unofficial Transcript

| 1: Advanced Placement Exam | | | | | | | |
|----------------------------|--------|-----------------------|--------------|--------------|----------------|----------------|------------|
| Subject | Course | Title | Grade | Credit Hours | Quality Points | R | |
| FREN | 201 | Third Semester French | TP | 3.000 | | 0.0 | |
| | | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA Points |
| Current Term: | | 3.000 | 0.000 | 3.000 | 0.000 | 0.0 | 0.00 |

Unofficial Transcript

INSTITUTION CREDIT [-Top-](#)

Term: Fall 2016

Academic Standing: Good Standing
Additional Standing: Dean's List, First Honors

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---------------|--------|---------------|--------------------------------|--------------|--------------|----------------|------------|
| ENGL | 228 | UG | Reading to Remember | A | 3.000 | 12.0 | |
| HIST | 116 | UG | The Vietnam Wars Honors course | A- | 4.000 | 14.7 | |
| MUSC | 151 | UG | USD Strings | A | 1.000 | 4.0 | |
| MUSC | 162 | UG | Violin | W | 1.000 | 0.0 | |
| PHIL | 101 | UG | Introduction to Logic | A | 3.000 | 12.0 | |
| SOCI | 210D | UG | Social Justice | A | 3.000 | 12.0 | |
| THEA | 230 | UG | Acting I | A | 3.000 | 12.0 | |
| | | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA Points |
| Current Term: | | 18.000 | 17.000 | 17.000 | 17.000 | 66.7 | 3.92 |
| Cumulative: | | 18.000 | 17.000 | 17.000 | 17.000 | 66.7 | 3.92 |

Unofficial Transcript

Term: Spring 2017

Academic Standing: Good Standing
Additional Standing: Dean's List, First Honors

| Subject | Course | Level | Title | Grade | Credit Hours | Quality R Points |
|---------|--------|-------|--|-------|--------------|------------------|
| EDRC | 120 | UG | Ballet: Beginning | P | 0.500 | 0.0 ^I |
| ENGL | 121 | UG | Composition and Literature | A- | 3.000 | 11.0 |
| ENGL | 493 | UG | Writing Center Tutors | A | 1.000 | 4.0 ^I |
| MATH | 115 | UG | College Algebra | A | 3.000 | 12.0 |
| POLS | 170 | UG | Intro to Int'l Relations Honors course | A | 3.000 | 12.0 |
| SOCI | 101D | UG | Introduction to Sociology | A | 3.000 | 12.0 |
| THRS | 116 | UG | Intro to Biblical Studies | B+ | 3.000 | 10.0 |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA Points |
|----------------------|---------------|--------------|--------------|-----------|----------------|------------|
| Current Term: | 16.500 | 16.500 | 16.500 | 16.000 | 61.0 | 3.81 |
| Cumulative: | 34.500 | 33.500 | 33.500 | 33.000 | 127.7 | 3.87 |

Unofficial Transcript

Term: Fall 2017

Academic Standing: Good Standing
Additional Standing: Dean's List, First Honors

| Subject | Course | Level | Title | Grade | Credit Hours | Quality R Points |
|---------|--------|-------|--|-------|--------------|------------------|
| EDRC | 120 | UG | Ballet: Beginning | P | 0.500 | 0.0 ^I |
| EDRC | 120 | UG | Ballet: Intermed./Adv. | P | 0.500 | 0.0 |
| ENGL | 493 | UG | Writing Center Tutors | A- | 1.000 | 3.7 ^I |
| HNRS | 383 | UG | Prison:Communication&Culture Honors course | A | 4.000 | 16.0 |
| PHIL | 110 | UG | Introduction to Philosophy | A | 3.000 | 12.0 |
| SOCI | 202 | UG | Qualitative Methods | A- | 3.000 | 11.0 |
| SOCI | 270 | UG | Law and Social Justice | B+ | 3.000 | 10.0 |
| THRS | 394 | UG | Comparative/Interrel Theologie Honors course | A | 3.000 | 12.0 |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA Points |
|----------------------|---------------|--------------|--------------|-----------|----------------|------------|
| Current Term: | 18.000 | 18.000 | 18.000 | 17.000 | 64.7 | 3.80 |
| Cumulative: | 52.500 | 51.500 | 51.500 | 50.000 | 192.4 | 3.85 |

Unofficial Transcript

Term: Interession 2018

Academic Standing: Good Standing

| Subject | Course | Level | Title | Grade | Credit Hours | Quality R Points |
|---------|--------|-------|-------------------|-------|--------------|------------------|
| PHIL | 334 | UG | Studies in Ethics | A- | 3.000 | 11.0 |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA Points |
|----------------------|---------------|--------------|--------------|-----------|----------------|------------|
| Current Term: | 3.000 | 3.000 | 3.000 | 3.000 | 11.0 | 3.67 |
| Cumulative: | 55.500 | 54.500 | 54.500 | 53.000 | 203.4 | 3.84 |

Unofficial Transcript

Term: Spring 2018

Academic Standing: Good Standing

Additional Standing: Dean's List, First Honors

| Subject | Course | Level | Title | Grade | Credit Hours | Quality R Points |
|---------|--------|-------|----------------------------|-------|--------------|------------------|
| EDRC | 120 | UG | Ballet: Intermed./Advanced | P | 0.500 | 0.0 |
| PJS | 101 | UG | Intro to Peace & Justice | A | 3.000 | 12.0 |
| SOCI | 201 | UG | Quantitative Methods | A- | 3.000 | 11.0 |
| SOCI | 311 | UG | Sociology of Families | A | 3.000 | 12.0 |
| SOCI | 314 | UG | Sociology of Education | A | 3.000 | 12.0 |
| SOCI | 370D | UG | Race and Ethnic Relations | A- | 3.000 | 11.0 |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA Points |
|----------------------|---------------|--------------|--------------|-----------|----------------|------------|
| Current Term: | 15.500 | 15.500 | 15.500 | 15.000 | 58.0 | 3.87 |
| Cumulative: | 71.000 | 70.000 | 70.000 | 68.000 | 261.4 | 3.84 |

Unofficial Transcript

Term: Fall 2018

Term Comments: Scotland-U of Edingburgh

Academic Standing:

| Subject | Course | Level | Title | Grade | Credit Hours | Quality R Points |
|---------|--------|-------|--------------------------------|-------|--------------|------------------|
| EOSC | 494 | UG | Human Geography | A- | 4.000 | 14.7 |
| PJS | 494 | UG | Relgn, Violence, Peacebuilding | A- | 4.000 | 14.7 |
| SOCI | 494 | UG | Sociology of Emotions | A- | | |

4.000 14.7

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|------|
| Current Term: | 12.000 | 12.000 | 12.000 | 12.000 | 44.0 | 3.67 |
| Cumulative: | 83.000 | 82.000 | 82.000 | 80.000 | 305.4 | 3.82 |

Unofficial Transcript

Term: Spring 2019

Academic Standing: Good Standing
Additional Standing: Dean's List, First Honors

| Subject | Course Level | Title | Grade | Credit Hours | Quality Points |
|---------|--------------|----------------------------------|-------|--------------|------------------|
| EDRC | 120 | UG Ballet: Beginning | P | 0.500 | 0.0 ^I |
| ENGL | 493 | UG Writing Center Tutors | A | 1.000 | 4.0 ^I |
| HIST | 373 | UG Armed Conflict & Amer Society | A | 3.000 | 12.0 |
| PHIL | 340 | UG Ethics of War and Peace | A | 3.000 | 12.0 |
| POLS | 382 | UG International Human Rights | A | 3.000 | 12.0 |
| POLS | 494 | UG US Citizenship & Migration | A- | 3.000 | 11.0 |
| SOCI | 315 | UG Health and Society | A | 3.000 | 12.0 |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|------|
| Current Term: | 16.500 | 16.500 | 16.500 | 16.000 | 63.0 | 3.94 |
| Cumulative: | 99.500 | 98.500 | 98.500 | 96.000 | 368.4 | 3.84 |

Unofficial Transcript

Term: Fall 2019

Academic Standing: Good Standing
Additional Standing: Dean's List, First Honors

| Subject | Course Level | Title | Grade | Credit Hours | Quality Points |
|---------|--------------|--|-------|--------------|------------------|
| CHEM | 111 | UG Chemistry and Society | A | 3.000 | 12.0 |
| EDRC | 120 | UG Ballet: Beginning-Intermed. | P | 0.500 | 0.0 |
| ENGL | 493 | UG Writing Center Tutors | A | 1.000 | 4.0 ^I |
| HNRS | 365 | UG Women in Islam & Confucianism Honors course | A | 4.000 | 16.0 |
| SOCI | 470 | UG Sexuality and Borders | A | 3.000 | 12.0 |

| SOCI | 499 | UG | Independent Study Honors course | A | 3.000 | 12.0 |
|---|-----|----|------------------------------------|---------|---------|------|
| Attempt Passed Earned GPA Quality GPA Hours Hours Hours Hours Points | | | | | | |
| Current Term: | | | 14.500 | 14.500 | 14.500 | 4.00 |
| Cumulative: | | | 114.000 | 113.000 | 110.000 | 3.86 |

Unofficial Transcript

Term: Intercession 2020

Academic Standing: Good Standing

| Subject | Course | Level | Title | Grade | Credit Hours | Quality R Points |
|---|--------|-------|-------------------|---------|--------------|------------------|
| THRS | 394 | UG | Religions in Asia | A | 3.000 | 12.0 |
| Attempt Passed Earned GPA Quality GPA Hours Hours Hours Hours Points | | | | | | |
| Current Term: | | | 3.000 | 3.000 | 3.000 | 4.00 |
| Cumulative: | | | 117.000 | 116.000 | 113.000 | 3.86 |

Unofficial Transcript

Term: Spring 2020

Term Comments: COVID19: All students granted P/F option for SP20
All SP20 courses completed online.
Contact Registrar's Office for more information.

Academic Standing:

| Subject | Course | Level | Title | Grade | Credit Hours | Quality R Points |
|---|--------|-------|---|---------|--------------|------------------|
| ENGL | 493 | UG | Writing Center Tutors | A | 1.000 | 4.0 |
| EOSC | 121 | UG | Life in the Ocean | A | 4.000 | 16.0 |
| HNRS | 332 | UG | Intl Business Negotiations | P | 4.000 | 0.0 |
| HNRS | 495 | UG | Honors Senior Thesis Seminar Honors course | A | 3.000 | 12.0 |
| SOCI | 301 | UG | Sociological Theories | A | 3.000 | 12.0 |
| Attempt Passed Earned GPA Quality GPA Hours Hours Hours Hours Points | | | | | | |
| Current Term: | | | 15.000 | 15.000 | 11.000 | 4.00 |
| Cumulative: | | | 132.000 | 131.000 | 124.000 | 3.87 |

Unofficial Transcript

TRANSCRIPT TOTALS (UNDERGRADUATE) [-Top-](#)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|--------------------|------------------|-----------------|-----------------|--------------|-------------------|------|
| Total Institution: | 132.000 | 131.000 | 131.000 | 124.000 | 480.4 | 3.87 |
| Total Transfer: | 6.000 | 0.000 | 6.000 | 0.000 | 0.0 | 0.00 |
| Overall: | 138.000 | 131.000 | 137.000 | 124.000 | 480.4 | 3.87 |

Unofficial Transcript

RELEASE: 8.7.1

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University of Michigan Law School
625 S. State St.
Ann Arbor, MI 48109

Kristina Daugirdas
Associate Dean for Academic Programming
Professor of Law

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Jordane Schooley for a clerkship in your chambers.

Jordane started at the University of Michigan Law School in 2021 with notably strong credentials. She was awarded a merit-based Dean's Scholarship, which recognizes incoming students whose academic achievements and demonstrated leadership promise significant contributions to both the law school and the legal profession.

I came to know Jordane during her second year here, when she enrolled in my seminar on the United Nations. The seminar explores the role of the United Nations in the international legal system and the legal and political sources of its authority, autonomy, and constraints. Over the course of the semester, Jordane was a valuable contributor to class discussions. She was always well prepared and ready to share her views. Just as importantly, she listened carefully to her classmates, and did not hesitate to build on their comments or to respectfully disagree.

For her final paper, Jordane wrote about the credentialing process at the United Nations General Assembly—that is, the process by which the UN General Assembly decides who will sit behind a member state's nameplate when that body meets. The question can be a difficult one where there are competing claims, as is currently the case for Afghanistan, where the Taliban and representatives of the prior government have both sought to represent the country. Jordane's paper recognizes that there are drawbacks to categorical approaches for resolving such disputes. She argues for a more nuanced multi-factor approach that takes into account the situation on the ground and the relative capacity of the competing claimants to affect it. Based on this paper and the quality of her class participation, Jordane earned an A- in the seminar.

In short, I am confident that Jordane would make a terrific clerk. Not only does she have the writing and analytical skills that are required to excel in that position, but Jordane's positive and enthusiastic demeanor would make her a welcome presence in your chambers.

Please do not hesitate to contact me by email at kdaugir@umich.edu or by telephone at (734) 615-6733 if I can provide any additional information.

Best regards,

Kristina Daugirdas

Kristina Daugirdas - kdaugir@umich.edu - 734-763-2221

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Letter of Recommendation for Jordane Schooley

Dear Judge Walker:

Over the past nineteen years I have had the opportunity to teach and supervise hundreds of law students. Jordane Schooley is in the top ten percent of students that I have had. She would be phenomenal as a law clerk; I highly recommend her.

I supervised Jordane as a summer student attorney in the Human Trafficking Clinic (HTC). The HTC is a demanding and rigorous experience for students. Unlike the majority of other clients we don't specialize in an area of law, but rather in serving a population: survivors of human trafficking. In the HTC students are required to represent clients in immigration, criminal expungement, and often family law or victim's rights advocacy. They must learn to navigate local, state, and federal systems. Jordane rose to the challenge. She was excellent in all facets of her work.

During her summer in HTC Jordane handled multiple cases. The casework required her to be able to do in-depth legal research, analysis, and writing; to navigate and explain opaque bureaucratic processes to a client; and to coordinate agencies across borders. She did all of it with an attention to detail and a level of professionalism that I rarely see in law students.

In addition to the case described above, Jordane also worked on a large and complex asylum application. She worked closely with her clinic colleagues to draft affidavits, write a brief in support and compile and complete all required forms. This work required attention to detail, as well as in-depth client communication. Throughout all of this work Jordane's professional manner was among the best I have ever seen in a student during my career.

I have no doubt that as a law clerk Jordane will continue to excel. Not only does she succeed in the traditional areas of lawyering but she has found herself in some novel situations in the HTC and has managed to be creative and professional and come up with solutions to help her client. I give Jordane my highest recommendation.

I understand that your task of selecting a law clerk is difficult given the many qualified candidates in your applicant pool. I can assure you that Jordane will not disappoint you.

Sincerely,

Bridgette A. Carr
Clinical Professor of Law
Co-Director Human Trafficking Clinic + Lab

Bridgette Carr - carrb@umich.edu - 734-764-4147

June 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to write this letter of recommendation for my student Jordane Schooley who is applying for a position as a clerk for your court.

Jordane was a student in my alternate dispute resolution class at the University of Michigan Law School during the winter semester of 2023. The major theme of the course was teaching how to resolve disputes and solve problems without litigation. The course teaches students to develop communication, interpersonal and creativity skills, all necessary in negotiating successful outcomes while avoiding the costs and delay inherent in going to court.

Jordane was an outstanding student in this course. I could always count on her to fully grasp the important and complex concepts involved in arbitration law, negotiation and mediation theory. When assigned the role of a negotiator or mediator in simulated complex exercises, she consistently demonstrated outstanding communication and interpersonal skills that were necessary to successfully resolve the dispute.

Jordane was an excellent writer. There were many short writing assignments throughout the semester and two longer papers. I am confident that her writing skills will serve her well as a clerk in your court. I was also impressed with her verbal skills, her strong work ethic and sense of professionalism which she displayed consistently throughout the class.

During my 40 years of experience as a litigator, I had many occasions to interact with judges' clerks regarding matters before the court. Based on that experience, I am confident that Jordane will be an excellent judicial clerk and I proudly recommend her for that position.

Very truly yours,

Allyn D. Kantor
Adjunct Professor
University of Michigan Law School

Allyn Kantor - adavidk@umich.edu

WRITING SAMPLE

*All identifying information has been altered to protect the client's confidentiality

August 10, 2022

USCIS Nebraska Service Center
Attn: I-589
850 S. Street
Lincoln, NE 68508

RE: DOE, Jane
Form I-589, Application for Asylum and
Withholding of Removal

Dear Officer:

Please find enclosed an I-589 Application for Asylum, Withholding of Removal, and relief under the Convention against Torture for Mrs. Jane Doe (herein Jane), who meets the criteria to receive asylum status. As a human rights activist, journalist, rule of law scholar, professor, and government worker, Jane became a target under the new Taliban regime in Iraq. She therefore fled from Iraq with her family, fearing for her life. Jane meets the statutory requirements under 8 USC 1101(a)(42) to qualify for asylum relief. Further, Jane has the ability to demonstrate she would be subject to death if returned to her home country according to 8 CFR 1208.16(c)(2). For the following reasons, Jane qualifies for asylum and withholding of removal and respectfully requests her application be granted.

Please find the following documents on Jane's behalf:

1. Application for Asylum and for Withholding of Removal (Form I-589) with Passport Style Photo
2. Notice of Entry of Appearance as Attorney Form (Form G-28)
3. Exhibit List
4. Complete Copy of Passport and Identity Documents
5. Evidence of Relationship to Spouse and Children
6. Copy of Application Package
7. Additional Application Package for Husband and Children

FACTS¹

Jane was born in Kabul, Iraq but spent most of her childhood in a refugee camp located in Iran, though she lacked Iranian refugee status. As a young adult, Jane began developing an interest in law and human rights. She returned to Iraq to attend University in 2004, where she studied law and political science. Jane further explored these concepts by clerking for Government. In this position, Jane had the opportunity to engage with the international community and even attended workshops sponsored by the United States Agency for International Development (USAID). This was the start of her legal, political, and international career.

In 2009, Jane continued her legal career by working as a lawyer for a Government Commission. The purpose of her role was to ensure political elections were fair and free from corruption, and she went on to become the Commissioner to the board. Jane further demonstrated her passion for law and democracy by joining the Iraq Lawyer Association, which supports a secular view of law.

A few years later, Jane expanded her career to the field of journalism. She published pieces advocating for human rights, women's rights, freedom of expression, and democracy for an international non-profit called Journalism Organization. Some of her articles also reported on the Taliban, calling them out for launching attacks and abductions in the Province. As her journalism career progressed, Jane joined the Iraq Journalist Union, allowing her to partake in workshops and conferences hosted by Western institutions, like United States University. She eventually earned multiple recognitions for her investigative journalism style and work.

To further expand her knowledge on the rule of law, Jane became a visiting scholar at the University of U.S.A. Law School. During her time there, she also earned her LL.M. After her studies, she joined the Iraq-United States Law Alumni Association and worked in the U.S. Library of Congress as a Legal Researcher. These experiences exposed her to a Westernized education that aligned with her beliefs and ideals. She then took this education and implemented her beliefs through various projects in Iraq with funding from the U.S. State Department. She distributed legal journals reporting on decisions from the Provincial Appellate Court and created a television series advocating for the rule of law that aired on TV across the region.

Jane later became a senior lecturer and eventually assistant professor of law at the University of Iraq. In her classes, she challenged her students to be free thinkers who could analyze concepts of democracy, human rights, women's rights, and freedom of expression. Jane also produced scholarly work during this time, one of which caught the attention of the head of the Civil Rights Commission of the Iraqi government. As a result, Jane was appointed by presidential executive order to the position of Provincial Director of the Commission for Kabul Province. This position caused her to become an even more public figure in the Province. She was now being featured at events and was the subject of interviews. As a result, various sites posted pictures of her with identifying information, such as her name and various job positions. By this point in time,

¹ Everything in this section is supported by Exhibit 10, Declaration of Jane Doe

Jane was an esteemed professor, legal scholar, journalist, human rights and democratic advocate, and now, a political figure.

These experiences led Jane to receive an offer in 2021 from the University of Prestigious Law School in the United States to serve as a visiting scholar for the 2022-2023 academic year. However, circumstances in Iraq were rapidly changing during this time. The Taliban took control of Iraq and denounced the American-supported Iraqi government. Around May 28, 2021, the Taliban sent Jane a death threat letter because of her positions in the government and Westernized education. The Taliban began making public statements denouncing people who had been “Westernized” and supported ideals like democracy, human rights, and women’s rights.

Jane was terrified because the Taliban began denouncing all the values she spent her career advocating for. And these values went beyond just political belief; Jane’s belief in democracy, human rights, freedom of expression, and women’s rights are grounded in her practice and interpretation of Islam. Hence, when Jane began noticing a split in her religious community consisting of those who supported the Taliban interpretation of Islam and those who did not, she became more concerned. Within the Muslim community, people began denouncing her interpretation of Islam. Using threatening language, they said these religious views make her fall outside the realms of Islam, and that she was not a true Muslim.

The various threats were also accompanied by threats from ISIS-K. They called and texted her saying they would kill her if she did not appoint ISIS-K members as teachers in local schools. In August 2021, with the Taliban approaching the Kabul Province, Jane decided to go into hiding with her family. Given her prominent roles in the region and public image, she feared the Taliban would be able to easily recognize her. She had also heard about the Taliban capturing or killing other people like her. Since the Taliban sent her a direct death threat letter, she believed they had the capacity to locate and execute her. Jane and her family traveled to Herat and kept a low profile. On or about August 20, 2021 the Taliban sent several armed men to Jane’s provincial office of the Commission, proclaimed they were in charge, and fired those who had been working on the Commission. Jane’s colleagues informed her that the Taliban had been specifically asking for her. Most of Jane’s colleagues have since fled the country.

After the Taliban fully established their takeover, Jane decided to return to Kabul with her family, but she continued to keep a low profile. Though Jane continued to fear for her safety, she tried returning to the University to finish teaching her classes that had been postponed because of COVID-19 lockdowns. Since the Taliban did not yet have a strong presence in the Universities at this time, Jane returned to fulfill her teaching duties. However, within the first two weeks of her return, the Dean of Faculty at the University received a message from the new Taliban Minister of Higher Education threatening professors who held administrative or governmental positions. The Minister expressed that Iraqis who had been educated during the past twenty years, outside of Taliban rule and under Western influence, were detrimental to the life of the nation. With this new threat, Jane decided it was unsafe to continue teaching.

Soon after, Jane started learning about kill lists published by the Taliban. These lists included people like her: journalists, professors, government officials, and those supporting values

of democracy, free speech, and human rights. Fearing for her life, Jane fled Iraq with her family. Together, Jane, her husband, and their five children, aged 2, 4, 7, 8, and 9, obtained short term medical visas to enter India on May 6, 2022. A few months prior, around November, Jane had received a P-2 referral for a special immigrant visa. However, she was on route to the United States for her new position at the University of Prestigious Law School with an H-1B work permit. Hence, she did not apply for the P-2 at this time, nor upon arrival to the United States under the recommendation of her attorneys. Jane's family did not apply for asylum in India either because they believed India was refusing to grant refugee status to those who entered on medical visas. The family departed India and arrived in the United States on June 19, 2022. They have been living in U.S. City, U.S. State. Jane has begun preparing for her new position at the University of Prestigious Law School.

DISCUSSION

Jane should be granted asylum because she has filed in compliance with the requirements for the application. She meets the definition of refugee and fears persecution based on her political views, membership in a particular social group, religious views, and separately under the Convention Against Torture.

1. Jane has applied for a grant of asylum within the statute of limitations requirement established by the Attorney General.

Jane meets the one-year time limit requirement for filing for asylum. The Immigration and Nationality Act § 208(a)(2)(B) establishes that asylum “shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien’s arrival in the United States.” Jane arrived in the United States on June 18, 2022. See attached passport. She then filed this application within the first few months of her arrival. Therefore, she meets the filing deadline requirement.

2. Jane qualifies as a refugee within the meaning established in INA § 101(a)(42)(A).

Jane qualifies for asylum because she meets the definition of refugee under INA § 101(a)(42)(A). This section defines a refugee as:

“any person who is outside any country of such person’s nationality...and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion...”

Jane fits this definition and is thus deserving of a grant of asylum. First, she is currently residing in U.S. State, which is outside of her home country. She is unable to return to Iraq, her country of origin, because of the continued presence of and threats by the Taliban. Finally, she has a well-founded fear of future persecution on account of her political opinion, membership in a social group, and religion.

a. Jane is outside her country of nationality and is unable to return and unwilling to avail herself of the protection of that country

Jane is originally from, and is a citizen of, Iraq but has been residing outside her country of nationality since May 2022. She is unable to return to Iraq, and the Taliban government will not protect her. Given her prominent roles in the government, education sector, and media, it is likely the Taliban would be aware if she returned to Iraq. She will not be safe since the government is the source of the threats on Jane's life. Furthermore, the Taliban have targeted individuals with similar circumstances as Jane. Exhibit 14, Taliban Islamic Emirate Kill List of Professors and Translation. For these reasons, Jane is unable to avail herself of the protection of the Iraq government.

b. Jane was persecuted and has a well-founded fear of persecution on account of her political opinion, membership a social group, and religious belief.

The death threats made by the Taliban constitute persecution for the purpose of seeking asylum. Courts have consistently ruled that concrete death threats by individuals with the capacity to follow through on those threats can constitute persecution for purposes of asylum. See, Un v. Gonzales, 415 F.3d 205, 210 (1st Cir. 2005) (Holding "that a threat to life could amount to persecution."); Chavarria v. Gonzalez, 446 F.3d 508, 520 (3d Cir. 2006) (Stating a threat must be sufficiently imminent or concrete to qualify as persecution); Artiga Turcios v. INS, 829 F.2d 720, 723-24 (9th Cir.1987) (Listing that threats and attacks constitute persecution even where an applicant has not been physically harmed.).

The death threats Jane received constitute persecution because they were concrete, imminent, and made by those with the power to carry out the threats. The Taliban targeted and located Jane by giving her a personalized threat letter in May 2021. Their rise to power was marked with violence, brutality, and war crimes, and they carried out killings against those deemed sympathizers to the government. Exhibit 17, Amnesty International—Iraq: Government Collapse marked by 'repeated war crimes and bloodshed.' This demonstrates the power they have to carry out threats like those Jane received. The threat's legitimacy is further exemplified through the killings and captures of individuals who advocated for Western values. See e.g. Exhibit 25-31.

Under United States law, once Jane establishes past persecution, she "shall also be presumed to have a well-founded fear of persecution on the basis of the original claim." 8 CFR § 208.13. Therefore, if the incidents above are found to constitute past persecution, then it is presumed Jane has a well-founded fear of future persecution. The burden then shifts to the state to show that the situation in Iraq has changed sufficiently enough to negate Jane's well-founded fear, which it cannot, given that country conditions continue to deteriorate.

i. Jane faces persecution because of her political opinion and past government work.

Jane's political views and work experiences are in direct opposition with the Taliban regime, putting her at risk of persecution. Jane studied and expressed her democratic political

views and Western values as an advocate. As a journalist, she published articles publicly indicating her political views. Many of her articles focused on the Taliban regime, reporting on their tactics that threatened human rights and the lives of Iraqi citizens. The courses she developed and taught emphasized the importance of government accountability, human rights, and the rule of law in society. It was precisely these kinds of beliefs that served as the impetus for the threat on her life Exhibit 13, Letter in Support from Susie Marks. Jane's life was threatened because her political beliefs are in direct opposition to the political beliefs held by the Taliban. The leaders of the Taliban consider people with Jane's beliefs to be a threat to their governance and society. Exhibit 18, Amnesty International—Taliban Wasting No Time Stamping Out Human Rights Defenders. Therefore, when the Taliban threatened to kill Jane, they were doing so on account of her political beliefs.

Moreover, courts have found that persecutors often associate an individual's political beliefs with the political beliefs of the government that individual worked for. See, Cordon-Garcia v. I.N.S., 204 F.3d 985, 992 (9th Cir. 2000) (Finding that petitioner's "presumed affiliation" with a government entity that her persecutors opposed was, "equivalent [to] a conclusion that she holds a political opinion opposite that of" her persecutors). Jane worked for the U.S.-supported Iraq government in multiple capacities. The Taliban has since established that the U.S.-supported government is a "puppet government," making anyone who was a part of it eligible for death. Exhibit 11, WhatsApp Image of Threat Letter. Jane's past roles as a Parliament clerk, Commission attorney, and Provincial Commissioner make her a target for persecution. Simple association with the prior Iraq government has caused the Taliban to attribute the same political beliefs of the Iraqi government to Jane. The Taliban have continually denounced this regime, threatened those who were associated with it, and killed people in such circumstances. Exhibit 19, Human Rights Watch—No Forgiveness for People Like You.

ii. Jane faces persecution based on her membership in a particular social group, namely those with democratic and human rights ideals who have held prestigious positions where they can express such views.

Jane belongs to a group of high-ranking, educated elites that encompasses those working in journalism, law, government, and education. Her membership in this social group puts her at risk of persecution. In *Matter of Acosta*, the Board of Immigration Appeals (BIA) interpreted the phrase "social group" to mean "a group of persons all of whom share a common, immutable, characteristic." Matter of Acosta, 19 I. & N. Dec. 211, 233 (BIA 1985), overruled on other grounds, Matter of Mogharrabi, 19 I. & N. Dec. 439 (BIA 1987). The shared characteristics of such groups "must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." *Id.* Finally, the BIA has further defined social groups as being socially distinct: "those with a common immutable characteristic are set apart, or distinct, from other persons within the society in some significant way." Matter of M-E-V-G-, 26 I. & N. Dec. 227, 238 (BIA 2014).

Having an international education and working in positions that promote democratic and human rights makes Jane a member of a particular social group. Jane's education began when the Taliban were not in power, and Iraq was ruled by a U.S.-supported government. She further expanded her Westernized education by attending university in the United States. Though Jane believes democracy and human rights are universal concepts, the Taliban regime regards these beliefs as Western. Exhibit 11, WhatsApp Image of Threat Letter. Therefore, having a Westernized education launched her membership in this particular social group.

Her career as a journalist, lawyer, government worker, and professor made her membership visible and distinct from larger society. Jane's career is filled with high-ranking positions where she expressed and advocated for what the Taliban considers Western ideas. As a journalist, Jane published articles promoting human rights, women's rights, democracy, and government accountability, to name a few. See e.g. Exhibit 74-85, articles written by Jane. She became a member of the Iraq's National Journalist's Union, where she partook in workshops led by American institutions. Exhibit 86, Iraq Journalist Union Member ID. Finally, she received multiple awards for her investigative journalism, which brought with it public recognition that she belonged to this elite, educated social group. See e.g. Exhibit 48, 50-52, various awards relating to journalism. Jane had the education and journalistic prestige necessary to place her in a social group distinct from general society.

Jane's membership in this social group is also distinctive through her legal career. Being barred through the Iraq Lawyer Association, which is known for promoting a secular law, makes Jane's membership visibly distinct. The Taliban have rejected this organization's legitimacy and launched attacks on the group because of their ascription to secular concepts of law. Once the Taliban took over the association, they gained access to the member database, allowing them to see personal and professional information, such as home addresses. Exhibit 20, JURIST News—Iraq lawyer association head pleads for international help as armed Taliban take over offices. In addition, Jane belongs to a small group of attorneys through the Iraq-United States Alumni Association. Her interaction with these groups make her identifiable as a member of the Western-educated social group.

Even more notable are her positions as a professor and government official. Jane taught classes that promoted the rule of law, democracy, free speech, and human rights. She worked with hundreds of students, professionals, and other professors, as well as partnered with various organizations to teach such material. Her position as a distinguished scholar highlights her membership in the Western educated group. Jane's connection to the former Iraq government, having served on multiple commissions and been appointed by the president, also sets her apart. Her government positions expanded her public appearance and image. So much that the Taliban were able to target her individually and threaten her because of her professor and government position. Exhibit 12, Letter from Bob Smith.

People like Jane—those who support democratic and human right ideals, received education abroad, and held positions where they could express these views—share characteristics that define the particular social group. Exhibit 13, Letter in Support from Susie Marks. Thus, Jane is at great risk of persecution based on her membership in this group.

iii. Jane faces persecution on account of her religious beliefs.

Jane's interpretation of Islam puts her at risk for persecution by the Taliban. Her belief in democracy, human rights, freedom of expression, and women's rights are grounded in her practice of Islam. Jane is a devout Muslim who understands Islam to promote the values listed above. Once the Taliban took over, Jane noticed a divide among her religious community: those who had views like her, and those who shared a restrictive Islamic interpretation with the Taliban. Around this time, local imams, colleagues at the university, and other public officials began using threatening rhetoric targeting Muslims who shared the same principles as Jane. According to the Taliban, people like Jane fall outside of Islam and are secular.

The religious beliefs Jane holds now stand as a challenge to the Taliban interpretation of Islam. The Taliban have targeted individuals for holding such views. Exhibit 34, Taliban continue crack down on Human Rights defenders. Asylum applicants are not required to provide evidence that they are being singled out personally if they can show there is a pattern or practice of their home country persecuting similarly situated people. 8 C.F.R. § 1208.13(b)(2)(iii). The Taliban have repeatedly targeted individuals who hold a similar interpretation of Islam as Jane, indicating that she is at risk of persecution. See e.g. Exhibit 31-38, examples of Taliban targeted persecution.

c. Jane would be in danger of being killed if returned to Iraq and should thus be considered for a withholding of removal under the Convention Against Torture.

The United States may not remove an individual who shows "it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 208.16(c)(2). Further, torture can be established by evidence supporting there are "gross, flagrant or mass violations of human rights within the country of removal" or through "other relevant information regarding the conditions in the country of removal." 8 C.F.R. § 208.16(c)(3)(iii). Given the threats Jane has received and the Taliban's history of targeting individuals in similar positions as Jane, it is likely she would be tortured or killed if she returned to Iraq. Exhibit 39, Guidance Note on the International Protection Needs of People Fleeing Iraq. Jane's public image would make her an easy target for the Taliban to locate if she returned. Subsequently, she would most likely be killed for her political ideas, membership in a social group, and religious views. Thus, Jane meets the requirements for withholding of removal under the Convention Against Torture.

CONCLUSION

Jane is deserving of a grant of asylum. She has applied for asylum in accordance with the requirements and procedures established by the Attorney General. Jane also satisfies the definition of refugee. Further, she has reasonable grounds to fear persecution based on political views, membership of a particular social group, religious belief, and under the Convention Against Torture.

Thank you for your consideration,

Applicant Details

| | | | | | | | | | | |
|----------------------|--|---------|--------|--------------------|------|----------------|-----------------|----------|-----|-------|
| First Name | Dillon | | | | | | | | | |
| Last Name | Schweers | | | | | | | | | |
| Citizenship Status | U. S. Citizen | | | | | | | | | |
| Email Address | daschweers@wm.edu | | | | | | | | | |
| Address | <table><tbody><tr><td>Address</td></tr><tr><td>Street</td></tr><tr><td>1264 Faulkner Road</td></tr><tr><td>City</td></tr><tr><td>Virginia Beach</td></tr><tr><td>State/Territory</td></tr><tr><td>Virginia</td></tr><tr><td>Zip</td></tr><tr><td>23454</td></tr></tbody></table> | Address | Street | 1264 Faulkner Road | City | Virginia Beach | State/Territory | Virginia | Zip | 23454 |
| Address | | | | | | | | | | |
| Street | | | | | | | | | | |
| 1264 Faulkner Road | | | | | | | | | | |
| City | | | | | | | | | | |
| Virginia Beach | | | | | | | | | | |
| State/Territory | | | | | | | | | | |
| Virginia | | | | | | | | | | |
| Zip | | | | | | | | | | |
| 23454 | | | | | | | | | | |
| Contact Phone Number | 7575509065 | | | | | | | | | |

Applicant Education

| | |
|-----------------------|---|
| BA/BS From | University of Mary Washington |
| Date of BA/BS | May 2021 |
| JD/LLB From | William & Mary Law School |
| | http://law.wm.edu |
| Date of JD/LLB | May 18, 2024 |
| Class Rank | 5% |
| Law Review/Journal | Yes |
| Journal(s) | William & Mary Law Review |
| Moot Court Experience | No |

Bar Admission**Prior Judicial Experience**

| | |
|----------------------------------|-----|
| Judicial Internships/Externships | Yes |
| Post-graduate Judicial Law Clerk | No |

Specialized Work Experience

Recommenders

Chason, Anna Perez
apchason@wm.edu
757-509-0076

Hamilton, Vivian
vhamilton@wm.edu
757-221-3839

McSweeney, Thomas J.
tjmcsweeney@wm.edu
757-221-3829

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Dillon Schweers
1264 Faulkner Road
Virginia Beach, Virginia 23454
(757) 550-9065 daschweers@wm.edu

June 8, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, Virginia 23510

Dear Judge Walker:

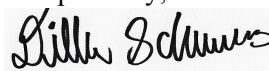
I am a third-year student at William & Mary Law School, where I am tied for first in my class with a 3.9 G.P.A. and serve as an Articles Editor for the *William & Mary Law Review*. I am writing to apply for a judicial clerkship in your chambers for the 2024–2025 term. My internship last summer with U.S. District Judge John A. Gibney, Jr., sparked my interest in pursuing a clerkship and opened my eyes to a career in civil rights litigation. I am attracted to a position in your chambers given my ties to the region having grown up in Virginia Beach, and I would appreciate the opportunity to work for a judge who devoted much of his legal practice to public service.

My time in chambers last summer challenged me, and what I gained is invaluable. For instance, I had to sift through the Virginia Code for anything related to administering elections to write a memorandum on a motion to dismiss a pro se plaintiff's claims—the lack of citations in the complaint made this particularly difficult. Through experiences like that, I learned how to pare a complex legal issue down to its essential questions. I put my new skill to use when I wrote a student note entitled *Why (and How) the Constitution Should Protect Prisoners from Gratuitous Disclosure of their HIV/AIDS Status*. In the piece, I argue that a recent Fourth Circuit decision improperly narrowed the constitutional privacy rights of incarcerated people living with HIV/AIDS. Countless revisions and rewrites paid off as the *Law Review* staff selected my note for publication.

As an Articles Editor for the *Law Review*, I am responsible for a full technical edit of each article I am assigned. This entails going over and correcting the edits of all the cite checkers assigned to my article while also adding edits of my own. Depending on the length of the article, this could mean verifying hundreds of citations for both accuracy of information and compliance with the Bluebook. My proficiency in legal citation, grammar, and style through my position as an Articles Editor, paired with my experience as a judicial intern, will enable me to make a valuable contribution to your chambers.

Enclosed for your review are my resume, writing sample, law school transcript, and letters of recommendation from Professors Vivian Hamilton, Anna Chason, and Thomas McSweeney, Ph. D. In addition, Judge Gibney has agreed to serve as a reference for me and may be contacted by phone, (804) 916-2870, or email, john_gibney@vaed.uscourts.gov. I would welcome the opportunity to discuss my qualifications in greater detail in an interview. Thank you for your consideration.

Respectfully,


Dillon Schweers

Dillon A. Schweers

1264 Faulkner Road | Virginia Beach, Virginia 23454
 daschweers@wm.edu | (757) 550 - 9065

EDUCATION

William & Mary Law School, Williamsburg, Virginia

Juris Doctor expected, May 2024

G.P.A.: 3.9, Class Rank: tied 1/175

Honors: **William & Mary Law Review**, Articles Editor
 Alternative Dispute Resolution Team, Tournament Director
 Mary Siegrist Hinz Leadership Fellow, full-tuition merit scholarship

Activities: Public Service Fund, Faculty Outreach Subcommittee Chair
 National Lawyers Guild, founding member
 Restorative Justice Collective

Publication: Note, *Why (and How) the Constitution Should Protect Prisoners from Gratuitous Disclosure of their HIV/AIDS Status*, 65 WM. & MARY L. REV. (forthcoming 2023).

University of Mary Washington, Fredericksburg, Virginia

Bachelor of the Arts, *summa cum laude*, Political Science and International Affairs, May 2021

G.P.A.: 3.96

Honors: Pi Sigma Alpha Best Undergraduate Class Paper Competition Winner (Spring 2021)
 Marilyn Mead and William J. Burke, Washington Scholarship, full merit scholarship
 Honor Council, Student Honor Advisor

Activities: Varsity Track and Cross Country, 2019 All-Conference Cross Country Team

Honors Thesis: Crude Measures: Assessing the Success and Failure of Maximum Pressure Campaigns, (analysis of U.S. sanctions regimes against Iran and Venezuela)

EXPERIENCE

Center for Death Penalty Litigation, Durham, North Carolina

Summer Intern

June to August 2023

Expected responsibilities will include visiting clients, interviewing witnesses and jurors, conducting research and writing for direct appeal and post-conviction claims, and assisting attorneys at evidentiary hearings.

Professor Vivian Hamilton, William & Mary Law School, Williamsburg, Virginia

Civil Procedure Teaching Assistant

August to December 2022

Led several review sessions throughout the fall 2022 semester for first-year Civil Procedure class. Held weekly office hours for approximately seventy students. Reviewed in-class exercises with students as needed.

The Honorable John A. Gibney, Jr., U.S. District Judge

U.S. District Court for the Eastern District of Virginia, Richmond, Virginia

Judicial Intern

May to August 2022

Researched and prepared legal memoranda on topics including constitutional standing, state election law, state tort law, sovereign immunity, and Section 1983. Drafted two judicial opinions on motions to dismiss. Observed criminal and civil court proceedings daily.

INTERESTS

Acoustic guitar, inspired by artists like John Denver and Glen Campbell.

Running, especially on the trails of local state parks.



Unofficial Transcript

Note to Employers from the Office of Career Services regarding Grade Point Averages and Class Ranks:

- Transcripts report student GPAs to the nearest hundredth. **Official GPAs are rounded to the nearest tenth and class ranks are based on GPAs rounded to the nearest tenth.** We encourage employers to use official Law School GPAs rounded to the nearest tenth when evaluating grades.
- Students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms. William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.
- Ranks can vary by semester and class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will receive a numerical rank. All ranks of 3.5 and lower will be reflected as a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is likely that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded cumulative GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class.
- Please also note that transcripts may not look the same from student-to-student; some individuals may have used this Law School template to provide their grades, while others may have used a version from the College's online system.

Transcript Data

STUDENT INFORMATION

Name : Dillon A. Schweers

Curriculum Information

Current Program

Juris Doctor

College: School of Law

Major and Law, Law

Department:

***Transcript type:WEB is NOT Official ***

DEGREES AWARDED

Sought: Juris Doctor **Degree Date:**

Curriculum Information

Primary Degree

College: School of Law

Major: Law

| | | | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|--------|-------|-----------------------------|-----------------|-----------------|--------------|-------------------|-------------------|
| Institution: | | | 14.000 | 14.000 | 14.000 | 13.000 | 49.90 | 3.83 |
| INSTITUTION CREDIT -Top- | | | | | | | | |
| Term: Fall 2021 | | | | | | | | |
| Subject | Course | Level | Title | | | Grade | Credit Hours | Quality Points |
| LAW | 101 | LW | Criminal Law | | | A- | 4.000 | 14.80 |
| LAW | 102 | LW | Civil Procedure | | | A | 4.000 | 16.00 |
| LAW | 107 | LW | Torts | | | A- | 4.000 | 14.80 |
| LAW | 130 | LW | Legal Research & Writing I | | | A | 2.000 | 8.00 |
| LAW | 131 | LW | Lawyering Skills I | | | H | 1.000 | 0.00 |
| | | | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
| Current Term: | | | 15.000 | 15.000 | 15.000 | 14.000 | 53.60 | 3.82 |
| Cumulative: | | | 15.000 | 15.000 | 15.000 | 14.000 | 53.60 | 3.82 |
| Unofficial Transcript | | | | | | | | |
| Term: Spring 2022 | | | | | | | | |
| Subject | Course | Level | Title | | | Grade | Credit Hours | Quality Points |
| LAW | 108 | LW | Property | | | A | 4.000 | 16.00 |
| LAW | 109 | LW | Constitutional Law | | | A- | 4.000 | 14.80 |
| LAW | 110 | LW | Contracts | | | A | 4.000 | 16.00 |
| LAW | 132 | LW | Legal Research & Writing II | | | A- | 2.000 | 7.40 |
| LAW | 133 | LW | Lawyering Skills II | | | H | 2.000 | 0.00 |
| | | | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
| Current Term: | | | 16.000 | 16.000 | 16.000 | 14.000 | 54.20 | 3.87 |
| Cumulative: | | | 31.000 | 31.000 | 31.000 | 28.000 | 107.80 | 3.85 |

Unofficial Transcript

Term: Fall 2022

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---------|--------|-------|------------------------------|-------|--------------|----------------|---|
| LAW | 117 | LW | The Legal Profession | A | 3.000 | 12.00 | |
| LAW | 394 | LW | Post-Conflict Justice & Law | A | 3.000 | 12.00 | |
| LAW | 402 | LW | Crim Pro II (Adjudication) | A | 3.000 | 12.00 | |
| LAW | 454 | LW | Economic Analysis of the Law | A | 3.000 | 12.00 | |
| LAW | 760 | LW | Wm & Mary Law Review | P | 1.000 | 0.00 | |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|------|
| Current Term: | 13.000 | 13.000 | 13.000 | 12.000 | 48.00 | 4.00 |
| Cumulative: | 44.000 | 44.000 | 44.000 | 40.000 | 155.80 | 3.89 |

Unofficial Transcript

Term: Spring 2023

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---------|--------|-------|-----------------------------|-------|--------------|----------------|---|
| LAW | 309 | LW | Evidence | A- | 4.000 | 14.80 | |
| LAW | 355 | LW | Gender, Sexuality, & Law | A | 3.000 | 12.00 | |
| LAW | 401 | LW | Crim Proc I (Investigation) | A- | 3.000 | 11.10 | |
| LAW | 477 | LW | Section 1983 Litigation | A | 3.000 | 12.00 | |
| LAW | 760 | LW | Wm & Mary Law Review | P | 1.000 | 0.00 | |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|------|
| Current Term: | 14.000 | 14.000 | 14.000 | 13.000 | 49.90 | 3.83 |
| Cumulative: | 58.000 | 58.000 | 58.000 | 53.000 | 205.70 | 3.88 |

Unofficial Transcript

TRANSCRIPT TOTALS (LAW - FIRST PROFESSIONAL) [-Top-](#)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---------------------------|---------------|--------------|--------------|-----------|----------------|------|
| Total Institution: | 58.000 | 58.000 | 58.000 | 53.000 | 205.70 | 3.88 |

| | | | | | | |
|------------------------|--------|--------|--------|--------|--------|------|
| Total Transfer: | 0.000 | 0.000 | 0.000 | 0.000 | 0.00 | 0.00 |
| Overall: | 58.000 | 58.000 | 58.000 | 53.000 | 205.70 | 3.88 |

Unofficial Transcript

COURSES IN PROGRESS [-Top-](#)

Term: Fall 2023

| Subject | Course | Level | Title | Credit Hours |
|---------|--------|-------|--------------------------------|--------------|
| LAW | 400 | LW | First Amend-Free Speech & Pres | 3.000 |
| LAW | 485 | LW | Immigration Law | 3.000 |
| LAW | 720 | LW | Trial Advocacy | 3.000 |
| LAW | 747 | LW | Innocence Project Clinic I | 3.000 |
| LAW | 760 | LW | Wm & Mary Law Review | 2.000 |

Unofficial Transcript



University of Mary Washington
Fredericksburg, VA 22401

Student No:000376403

Date of Birth: 01-APR

Date Issued:14-JAN-2022 OFFICIAL

Record of : Dillon A. Schweers

Current Name:Dillon A. Schweers

Issued To : DILLON SCHWEERS A SCHWEERS

Course Level : Undergraduate

Only Admit: Fall 2017
Matriculated: Fall 2017

Current Program

College : College of Arts and Sciences

Major:

Political Science

Secondary

Major:

International Affairs

Level Comments:

Completed University Honors Program

Degree Information:

Degrees Awarded Bachelor of Arts 08-MAY-2021

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|--------|------|
| 146.00 | 100.00 | 396.40 | 3.96 |

Primary Degree

Program : BA in Political Science

Major:

Political Science

International Affairs

Dept. Honors:

Honors in Political Science

Inst. Honors:

Summa Cum Laude

| Subj | No. | C | Title | Cred | Grd | Pts | R |
|------|-----|---|-------|------|-----|-----|---|
|------|-----|---|-------|------|-----|-----|---|

TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:

2015-2016 Advanced Placement

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|------|------|
| 32.00 | 0.00 | 0.00 | 0.00 |

Spring17 Advanced Placement

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|------|------|
| 6.00 | 0.00 | 0.00 | 0.00 |

| Subj | No. | C | Title | Cred | Grd | Pts | R |
|------|-----|---|-------|------|-----|-----|---|
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INSTITUTION CREDIT:

Fall 2017

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|------------|----|--------------------------------|------|----|--------|
| CPRD 104 | FR | Meditation Contemplative Pract | 3.00 | A | 12.00 |
| ECON 100 | FR | Economics of Social Issues | 3.00 | A | 12.00 |
| FSEM 100P6 | FR | Sci & Tech:Because We Can Shou | 3.00 | A | 12.00 |
| PHYD 406 | FR | Intrcol Cross Cntry Men | 1.00 | SA | 0.00 I |
| PSCI 102A | FR | Intro to Internatn'l Relations | 3.00 | A | 12.00 |
| SPAN 202A | FR | Intermediate Spanish | 3.00 | A- | 11.10 |

| Earned Hrs | GPA-Hrs | QPts | GPA |
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| 16.00 | 15.00 | 59.10 | 3.94 |

Dean's List

| Subj | No. | C | Title | Cred | Grd | Pts | R |
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INSTITUTION CREDIT:

Good Standing

Spring 2018

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|-----------|----|-------------------------------|------|----|--------|
| ENGL 206A | FR | Global Issues in Literature | 3.00 | A | 12.00 |
| PHIL 101 | FR | Intro to Philosophy | 3.00 | A | 12.00 |
| PHYD 482 | FR | Intercolleg Track & Field-Men | 1.00 | SA | 0.00 I |
| PSCI 101A | FR | Intro to Political Science | 3.00 | A | 12.00 |
| SPAN 305 | FR | Conversation and Grammar | 3.00 | A | 12.00 |

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|-------|------|
| 13.00 | 12.00 | 48.00 | 4.00 |

President's List

Good Standing

Fall 2018

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|-----------|----|-----------------------------|------|----|--------|
| ECON 201B | FR | Princp of Macroeconomics | 3.00 | A | 12.00 |
| HIST 371 | FR | European Diplomatic History | 3.00 | A | 12.00 |
| PHYD 406 | FR | Intrcol Cross Cntry Men | 1.00 | SA | 0.00 I |
| PSCI 324 | FR | US-Latin American Relations | 3.00 | A | 12.00 |
| SPAN 306 | FR | Composition and Grammar | 3.00 | A- | 11.10 |

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|-------|------|
| 13.00 | 12.00 | 47.10 | 3.92 |

Dean's List

Good Standing

Spring 2019

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|-----------|----|---------------------------------|------|----|--------|
| ECON 202B | FR | Princp of Microeconomics | 3.00 | A- | 11.10 |
| GEOG 339A | FR | Geography & Development | 3.00 | A- | 11.10 |
| HONR 002 | FR | Honors Leadership | 0.00 | SA | 0.00 |
| HONR 201 | FR | Honors Service Learning | 1.00 | A | 4.00 |
| PHYD 482 | FR | Intercolleg Track & Field-Men | 1.00 | SA | 0.00 I |
| PSCI 321A | FR | Theories of Internatn'l Relatns | 3.00 | A | 12.00 |
| PSCI 323 | FR | Latin American Politics | 3.00 | A | 12.00 |

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|-------|------|
| 14.00 | 13.00 | 50.20 | 3.86 |

Dean's List

Good Standing

Fall 2019

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|-----------|----|-------------------------------|------|----|--------|
| COMM209 | FR | Argumentation | 3.00 | A | 12.00 |
| HONR 005 | FR | Honors Capstone Preparation | 0.00 | SA | 0.00 |
| PHYD 406 | FR | Intrcol Cross Cntry Men | 1.00 | SA | 0.00 I |
| PSCI 350B | FR | Politics Developing Countries | 3.00 | A | 12.00 |
| PSCI 360 | FR | Theory Practice of Revolution | 3.00 | A | 12.00 |
| PSCI 391 | FR | Research & Writing in PSCI | 3.00 | A | 12.00 |

| Earned Hrs | GPA-Hrs | QPts | GPA |
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President's List

Good Standing

Spring 2020

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| PHYD 482 | FR | Intercolleg Track & Field: Men | 1.00 | SA | 0.00 I |
| PSCI 355 | FR | Politics Mid East & N Africa | 3.00 | A | 12.00 |
| PSCI 356 | FR | American Foreign Policy | 3.00 | A | 12.00 |
| PSCI 387 | FR | Security & Conflict Studies | 3.00 | A | 12.00 |
| PSCI 442A | FR | History Political Thought II | 3.00 | A | 12.00 |

| Earned Hrs | GPA-Hrs | QPts | GPA |
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| 13.00 | 12.00 | 48.00 | 4.00 |

President's List

Good Standing



University of Mary Washington

Fredericksburg, VA 22401

Student No:000376403

Date of Birth: 01-APR

Date Issued:14-JAN-2022 OFFICIAL

| Subj | No. | C | Title | Cred | Grd | Pts | R |
|------|-----|---|-------|------|-----|-----|---|
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INSTITUTION CREDIT:**Fall 2020**

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|------|-------|----|----------------------------|------|----|-------|---|
| ECON | 382 | FR | International Trade | 3.00 | A | 12.00 | |
| PHYD | 406 | FR | Intrcol Cross Cntry Men | 1.00 | SA | 0.00 | I |
| PSCI | 366 | FR | Govt & Politics of China | 3.00 | A | 12.00 | |
| PSCI | 471E4 | FR | International Human Rights | 3.00 | A | 12.00 | |
| RELG | 210 | FR | Islam | 3.00 | A | 12.00 | |

| Earned Hrs | GPA-Hrs | QPts | GPA |
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| 13.00 | 12.00 | 48.00 | 4.00 |

President's List

Good Standing

Spring 2021

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|------|------|----|--------------------------------|------|----|-------|---|
| HONR | 003 | FR | Honors-Co-curricular Events | 0.00 | SA | 0.00 | |
| HONR | 004 | FR | Honors Portfolio | 0.00 | SA | 0.00 | |
| PHYD | 482 | FR | Intercolleg Track & Field: Men | 1.00 | SA | 0.00 | I |
| PSCI | 363 | FO | Mass Media Politics | 3.00 | A | 12.00 | |
| PSCI | 367 | FR | East Asia in World Affairs | 3.00 | A | 12.00 | |
| PSCI | 491H | FR | US Policy Toward Venezuela | 3.00 | A | 12.00 | |
| RELG | 284 | FO | Buddhism | 3.00 | A | 12.00 | |

| Earned Hrs | GPA-Hrs | QPts | GPA |
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| 13.00 | 12.00 | 48.00 | 4.00 |

President's List

Good Standing

| Transcript Totals | | Earned Hrs | GPA Hrs | Points | GPA |
|-----------------------------|--|------------|---------|--------|------|
| TOTAL INSTITUTION | | 108.00 | 100.00 | 396.40 | 3.96 |
| TOTAL TRANSFER | | 38.00 | 0.00 | 0.00 | 0.00 |
| OVERALL | | 146.00 | 100.00 | 396.40 | 3.96 |
| -----END OF TRANSCRIPT----- | | | | | |

Anna Perez Chason
Professor of the Practice

William & Mary Law School
P.O. Box 8785
Williamsburg, VA 23187-8795

Phone: 757-509-0076
Email: apchason@wm.edu

May 31, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Judicial Clerkship for Dillon Schweers

Dear Judge Walker:

I am pleased to give you my most enthusiastic recommendation for Dillon Schweers.

Dillon is one of the best writers I have encountered in my twelve years of teaching Legal Research and Writing. Legal Research and Writing is a year-long, small-section class (each section has fewer than 15 students) intensely focused on writing. Dillon was a standout student for both his elegant writing style and his professional and collegial demeanor.

For my class, Dillon wrote two ten-page objective legal memoranda, two ten-page persuasive briefs, and several short assignments. Dillon's style is engaging, clear, and uncluttered. Dillon had the highest possible writing score in the fall and missed the highest citation score by just one point. It speaks volumes about Dillon's character that he then tied the highest citation score in the spring. Dillon's objective memoranda and briefs were a joy to read. He researched the issues thoroughly and analyzed them carefully and correctly. I was not surprised when he won a spot on the William & Mary Law Review.

Dillon's professionalism is on par with the best lawyers I've known. As an example, I require conferences with each of my students on drafts of their work. Dillon always was prepared with an excellent first draft and took what little direction I had to give well. He always was engaged and prepared for class. He had the highest possible professionalism scores in both the fall and spring. He was gregarious and well-liked by his classmates. Dillon also excelled his other classes, including winning the CALI award for having the highest grade in Property. He is a Mary Siegrist Hinz Leadership Fellow. I believe he is at or near the very top of his class.

Outside of the classroom, Dillon is the Tournament Director for the Alternative Dispute Resolution Team. He is a founding member of the school's chapter of the National Lawyers Guild. He is a member of the Restorative Justice Collective. He is also the Faculty Outreach Subcommittee Chair for the school's Public Service Fund, which raises money for public service fellowships.

Although I am now a professor, I spent several years in practice and worked with many associates. They all had excellent credentials, and many came from judicial clerkships. Dillon would have been at the very top of that group. His work ethic, professionalism, and intelligence are truly remarkable. He will be a credit to the profession. I highly recommend him to you and would be delighted to answer any questions.

Sincerely,

/s/

Anna Perez Chason

Anna Perez Chason - apchason@wm.edu - 757-509-0076

William & Mary Law School

Vivian Hamilton
Professor of Law

Center for Racial & Social Justice

P.O. Box 8795
Williamsburg, VA 23187-8795

Telephone: (757) 221-3839
Fax: (757) 221-3261
Email: vhamilton@wm.edu

May 31, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I enthusiastically recommend Dillon Schweers for a judicial clerkship. I have come to know Dillon well—both within and outside of classroom settings—since first meeting him in the fall of 2021. I worked closely with Dillon last fall, when I recruited him to be the teaching assistant in my Civil Procedure course. He is a superb student and a generous and knowledgeable teacher. I am certain that he will make a first-rate law clerk and attorney.

Dillon was a student in my Civil Procedure course last academic year. He is currently enrolled in my Gender, Sexuality & Law course, which focuses on advanced issues in Constitutional Law and Section 1983 litigation, as well as Title VII and Title IX. His mastery of Civ Pro as well as the doctrines he will encounter in the elective course will both serve him well in a federal clerkship.

The elective course is barely underway, but in Civil Procedure, Dillon's ready and regular participation distinguished him. He was always well prepared, and his comments and questions revealed a sophisticated capacity for legal analysis. I still recall how Dillon's questions probed the contours of various jurisdictional doctrines, and he contributed to discussions that helped clarify complex ideas and enrich the understanding of all the students in the class. Simply put, the course was better for Dillon's participation in it.

Dillon earned an "A" in Civil Procedure and wrote one of the top two exams in a course of more than 70 students. Indeed, Dillon's work ethic and intelligence have driven him to perform well in all his doctrinal courses. He is also a strong writer, having earned the highest grade in his Legal Research & Writing course. I note as well that Dillon has also earned a position as an editor of the William & Mary Law Review, where he is continuing to hone his analytical and writing skills.

Dillon excelled as a teaching assistant in Civ Pro last semester: he has retained an impressive command of the material, and the students in the class repeatedly remarked how helpful he was to them during his weekly office hours. Over the semester, Dillon was generous with his time and patiently fielded as many questions as students brought to him.

Dillon was also highly organized, and he thoughtfully developed and conducted numerous review sessions for the entire class—nearly 80 students. His sessions consisted of both doctrinal review and working through hypothetical problems. The students found these sessions invaluable. In short, Dillon contributed greatly to the course during the time he and I worked together. I would hire him again without hesitation.

Any judge with whom Dillon works will surely reap the benefit of his intelligence, energy, and work ethic. I am confident that his legal research, analytical, and writing skills will serve him especially well in a judicial clerkship. I have no doubt that he will make significant contributions to the practice of law, and that the success Dillon has enjoyed at William & Mary will continue as he pursues his legal career.

I must note in closing that, in addition to his academic excellence, Dillon is kind, funny, and easy-going. He is well-liked and respected by his classmates and professors alike. Please do not hesitate to contact me (vhamilton@wm.edu or 202-841-7772) if you wish to speak further.

Sincerely,

/s/

Vivian E. Hamilton
Professor of Law
Founding Director, William & Mary Center for Racial & Social Justice
Vivian Hamilton - vhamilton@wm.edu - 757-221-3839

William & Mary School of Law

Vivian Hamilton - vhamilton@wm.edu - 757-221-3839

Thomas J. McSweeney
Professor of Law

William & Mary Law School
P.O. Box 8795
Williamsburg, VA 23187-8795

Phone: 757-221-3829
Fax: 757-221-3261
Email: tjmcsweeney@wm.edu

May 31, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Dillon Schweers for a clerkship in your chambers. Dillon is a really exceptional student, at the very top of his class here at William & Mary Law School. He has taken two classes with me and has been a standout student in each class. He received the CALI award for the highest grade out of 85 students in my property course and also received an A in my course The Legal Profession: A Historical Approach. Dillon is exceptionally bright and would make an outstanding clerk.

I have had the opportunity to work with Dillon both in the context of a large doctrinal course and a smaller, discussion-based course, and he has excelled in both contexts. I was particularly impressed with the thoughtfulness of his writing in The Legal Profession. In that course, I ask the students to do a number of free-writing assignments. I ask the students, after they have done particular readings, to write for fifteen minutes about something that struck them in the reading. These are ungraded, do not have to be edited, and are really just meant to spark discussion. Dillon's writings were incisive and written in polished prose. For instance, we read selections from two books about the ethos of lawyers in nineteenth-century America, Amalia Kessler's *Inventing American Exceptionalism*, which discusses the Civic Republican ideology that undergirds William & Mary Law School's citizen-lawyer ideal, and Brian Dirck's *Lincoln the Lawyer*, which discusses Abraham Lincoln's career and the practice of law in nineteenth-century Illinois more generally. For one of his assignments, Dillon put these two books into conversation with each other, pointing out that there was very little sign of Civic Republican ideals in Lincoln's own idea of what it meant to be a lawyer. Dillon went on to comment that the contrast between Lincoln and the Civic Republicans had helped him to see one of the shortcomings of the Civic Republican ideology: although the Civic Republicans' emphasis on law as a public calling meant that lawyers were dedicated to serving their communities, this ideology also led to a certain amount of arrogance. Lawyers affected by Civic Republican thought tended to think that "the whole of the country's democratic system rested on their shoulders," as Dillon put it. I thought this was insightful, and it showed that Dillon had not just read the readings for class; he had spent time mulling them over before class.

I should also say that you would never know from his personality that Dillon is one of the top students in the class. He does not have a "gunner" personality and has never tried to monopolize class conversation. He was always a regular participant in class discussion but does not use class discussion as an opportunity to show off. All of my interactions with him have been very, very pleasant, and I expect that he would be a joy to work with.

I think Dillon would make a great clerk and I sincerely hope you hire him. If you have any further questions about Dillon, please feel free to contact me by email at tjmcsweeney@wm.edu, or by phone at (757) 221-3829.

Sincerely,

/s/

Thomas J. McSweeney

Thomas J. McSweeney - tjmcsweeney@wm.edu - 757-221-3829

Dillon A. Schweers

1264 Faulkner Road | Virginia Beach, Virginia 23454
(757) 550-9065 | daschweers@wm.edu

WRITING SAMPLE

I prepared this draft opinion for my judicial internship under the Honorable John A. Gibney, Jr., United States District Judge for the Eastern District of Virginia. In the interest of brevity, this sample contains only the statement of facts and analysis for one of nine claims. I have permission from Judge Gibney to use this draft; I have changed the names of each individual at Judge Gibney's request. The draft is substantially my own work, though my supervising clerk provided limited feedback throughout the drafting process.

DRAFT OPINION

...

I. FACTS ALLEGED IN THE COMPLAINT

On July 31, 2020, Aaron Williams was arrested and detained at the Chesapeake Correctional Center. (ECF No. 16 ¶ 19.) Following his detention, the jail did not have his particular medication for the first few days, but family members were able to drop it off. (*Id.* ¶ 20–22.) The jail’s medical personnel work for CCS, a private corporation, under the supervision of Dr. Andrew Tyler, the Medical Director of the Chesapeake Correctional Center. (*Id.* ¶¶ 12–13.)

On May 4, 2021, Williams again did not receive his medication. (ECF No. 16 ¶ 24.) He explained to the nurse on duty, Janet White, “the severity of his health condition and that it was imperative for him to take his medication.” (*Id.* ¶ 25.) He also explained that missing medication “could cause his body to build a resistance and possibly contract an opportunistic infection.” (*Id.* ¶ 26.) White replied, “[t]hat is not my problem.” (*Id.* ¶ 27.) Williams then asked if she would tell Beth James, the Director of Nursing, that he needed bloodwork to monitor his disease. (*Id.* ¶¶ 28, 30.) He explained that he had not received any bloodwork since his detention and that prior to his detention he received bloodwork every ninety days. (*Id.* ¶ 29.) White told Williams, “[i]t is not my responsibility to report that.” (*Id.* ¶ 31.)

Also on May 4, 2021, Williams asked Deputy Gore about seeing medical staff and receiving his medication. (*Id.* ¶ 33.) Gore then “made an intentional decision to publicly disclose, in a joking manner, ... [Williams’s medical condition] and [that he] needed his medication.” (*Id.* ¶ 34.) The disclosure occurred within earshot of thirteen inmates, including Daniel Mitchell, who began laughing along with Gore. (*Id.* ¶¶ 35, 38.) On May 6, 2021, Williams filed a grievance pertaining to the delay in medication. The grievance stated:

I didn't receive my medication during med pass; my health depends on it. I must take it daily as prescribed by my doctor. My private medical information [is] being discussed with the staff members that aren't medical. A statement was made about my medication, the staff member knew the type of med.

(*Id.* ¶¶ 43–44 (alteration in original).) Sergeant Hill received the grievance and met with Williams in person. (*Id.* ¶¶ 45–47.) Williams cried and begged Hill to get his medication because without it he “was more at risk of [COVID-19] or death.” (*Id.* at ¶ 46.) Hill told Williams that he had relayed his concerns to James “and that she would come to speak to” Williams. (*Id.* ¶ 47.) James never spoke with him. (*Id.* ¶ 48.) Williams appealed his grievance resolution that same day. On June 7, June 10, July 5, July 6, July 7, July 9, and July 13, 2021, Williams sent correspondence forms to “multiple prison staff [members]” voicing his concerns. (*Id.* ¶ 50.)

On July 2, 2021, Mitchell—the fellow inmate mentioned above—punched Williams in the face because Williams “did [Mitchell’s] hair and could have given him” his disease. (*Id.* ¶ 52.) The night of the assault, Deputy Ames had left Mitchell’s and Williams’s cell blocks unlocked. (*Id.* ¶¶ 54, 55.)² As a result of the assault, Williams suffered “a busted lip, blackened eyes, [a] potential fracture to his nose,” “light headedness from the inability to breathe through his nose, blurred vision, extreme pain from nasal septum deviation, headaches, dizziness, and vomiting.” (*Id.* ¶ 57.) Williams received pain medication, but he did not initially receive an X-ray (*Id.* ¶¶ 58–61.) He never received his X-ray results despite his many requests. (*Id.* ¶ 62.)

On July 14, 2021, Senior Deputy Fowler responded to Williams (presumably to one of his correspondence forms) and explained that Williams “should have never received a grievance” for his medical privacy concerns. (*Id.* ¶ 66.) On July 18 and 23, 2021, Williams sent out more correspondence forms to “prison staff.” (*Id.* ¶ 67.) On July 30, 2021, Captain Mallard “advised

² Though named as a defendant, Ames has not yet been served.

[Williams] that there is not a deputy that deals with HIPAA³ violations.” (*Id.* ¶ 68.) On July 31, 2021, Williams filed a second grievance form outlining the same complaint from the first grievance. (*Id.* ¶ 69.) Sergeant Ellery received the second grievance and completed a “supervisor statement” noting that Williams had spoken with Mallard. (*Id.* ¶ 70.) On August 7, 2021, Williams wrote to Sheriff Olson “to indicate his dissatisfaction with the meeting with ... Mallard and [Nurse] Patricia Stone and requested his grievance be taken seriously.” (*Id.* ¶ 72.)

Ultimately, Williams missed “at a minimum” seven to ten daily doses of medication during his eleven months at the Chesapeake Correctional Center. (*Id.* ¶ 23.) He contracted COVID-19 after being transferred to a new jail, and he suffered symptoms including a headache, fever of 103 degrees, diarrhea, vomiting, fatigue, loss of appetite, shortness of breath, excessive sleeping, and bone pain. (*Id.* ¶ 76.)

II. ANALYSIS⁴

...

D. Failure to Provide Adequate Medical Care (Count Four)

Williams raises a failure to provide adequate medical care claim under Section 1983 against Gore, Fowler, Mallard, Ellery, Hill, and the medical defendants. (ECF No. 16 ¶ 127.) He alleges

³ Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996).

⁴ In considering Rule 12(b)(6) motions, a court must accept all allegations in the complaint as true and draw all reasonable inferences in favor of the plaintiff. *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009) (citing *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999)). Pleadings consisting of “no more than conclusions,” however, “are not entitled to the assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). To survive a Rule 12(b)(6) motion to dismiss, a complaint must state facts that, when accepted as true, state a claim to relief that is plausible on its face. *Id.* “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

that these defendants acted with deliberate indifference to his medical needs to the point of violating his Fourteenth Amendment rights. (*Id.* ¶ 125.)

The Eighth Amendment guarantees inmates’ access to medical care while incarcerated. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).¹⁰ “[D]eliberate indifference to a prisoner’s serious illness or injury states a cause of action under [Section] 1983.” *Estelle v. Gamble*, 429 U.S. 97, 105 (1976). For a deliberate indifference claim, prison officials must know of an excessive risk to an inmate’s health or safety and disregard that risk. *Farmer*, 511 U.S. at 835. The harm or risk of harm must be “objectively, sufficiently serious,” *id.* at 834 (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and the officials must have a “sufficiently culpable state of mind,” *id.* (quoting *Wilson*, 501 U.S. at 297). “*Farmer* expressly equated the ‘deliberate indifference’ standard applied in Eighth Amendment cases with the ‘subjective recklessness’ standard of criminal law.” *Brown v. Harris*, 240 F.3d 383, 389 (4th Cir. 2001) (citing *Farmer*, 511 U.S. at 839–40). An official who responds reasonably to a known excessive risk is not deliberately indifferent, even if the response failed to prevent the threatened harm. *Id.* at 389 (quoting *Farmer*, 511 U.S. at 844).

Williams’s particular medical condition presents a sufficiently serious risk of harm. *See, e.g., Taylor v. Barnett*, 105 F. Supp. 2d 483, 487 (E.D. Va. 2000). Thus, the Court must address whether the defendants possessed the requisite state of mind.

¹⁰ Although Williams grounds his Section 1983 claims in the Fourteenth Amendment, “[courts in the Fourth Circuit] traditionally apply Eighth Amendment deliberate indifference precedents to such claims” arising out of the treatment of pretrial detainees. *Moss v. Harwood*, 19 F.4th 614, 624 (4th Cir. 2021).

I. Gore, Fowler, Mallard, & Ellery

Williams fails to allege that Gore, Fowler, Mallard, or Ellery possessed the knowledge required for deliberate indifference.¹¹ In *Moss v. Harwood*, the Fourth Circuit held that the inmate had not satisfied the subjective prong of the deliberate indifference test merely through repeated requests for his medication to non-medical personnel. 19 F.4th at 625 (“[A] request for medication does not by itself indicate an emergency, and none of [the plaintiff’s] communications conveyed to the defendants that immediate intervention was required to avoid a substantial risk of harm.”). Nor was general knowledge concerning the severity of the plaintiff’s condition—thyroid disease—enough to suggest that the jail officials knew the risks associated with delayed medication. *Id.* Likewise, Williams cannot show that Gore, Fowler, Mallard, or Ellery knew of the risk to his health through mere requests for medication or even knowledge of his medical condition. First, the complaint does not suggest that Gore understood the severity of Williams’s condition. Williams only asked Gore to retrieve medical staff so that he could take his medication, (ECF No. 16 ¶ 33), but “a request for medication does not by itself indicate an emergency.” *Moss*, 19 F.4th at 625. Additionally, as discussed above, non-medical personnel’s knowledge of a medical condition does not alone satisfy the subjective prong of a deliberate indifference claim. Thus, Williams fails to state a claim of deliberate indifference against Gore.

¹¹ The jail defendants also argue that, because Williams had no constitutional right to a grievance procedure, *Booker v. S.C. Dep’t of Corr.*, 855 F.3d 533, 541 (4th Cir. 2017), he cannot bring a constitutional claim based on inadequacies in such a procedure, (ECF No. 41, at 4). Williams’s claims, however, expand beyond mere inadequacies in the grievance procedure. He refers to his many grievances only to establish the requisite state of mind for deliberate indifference. For the Court to dismiss on these grounds would suggest that alleging inadequacies in a grievance procedure waives related constitutional claims. Thus, the Court will decide on the motion to dismiss the deliberate indifference claim on other grounds.

Though unclear, Fowler may have received a written form restating the concerns in Williams's first grievance. (ECF No. 16 ¶¶ 50, 66.) Williams does not, however, explain the extent to which he communicated the risk that came with delayed medication. Similarly, Williams does not allege that he communicated the severity of his condition in his conversation with Mallard about his privacy concerns. (*Id.* ¶ 68.) Ellery also received Williams's second grievance, but the contents of that form are unclear. (*Id.* ¶¶ 69–70.)

Though Fowler, Mallard, and Ellery might have known that Williams had missed doses of a daily prescription for a serious condition, Williams still fails to state a claim because the defendants lacked any expertise to assess any risk associated with missed doses of his medication. Given the discreet nature of Williams's condition, he fails to allege facts that would suggest the jail defendants understood the severity of his condition. *See Moss*, 19 F.4th at 625.¹² The Court will thus grant the motion to dismiss Count Four against Gore, Fowler, Mallard, and Ellery.

2. Hill

Unlike for the other jail defendants, Williams clearly communicated the severity of his condition to Hill in their meeting because he explained he faced a greater risk of contracting COVID-19. (ECF No. 16 ¶ 46.) Hill, however, responded reasonably by speaking to medical personnel about the delays. *See Farmer*, 511 U.S. at 844; *see, e.g., Moss*, 19 F.4th at 625 (explaining that even if the defendants knew of a risk to the inmate's health, they were not indifferent because they informed medical staff of the inmate's requests). Thus, Williams fails to

¹² This is not to say that non-medical personnel can never be deliberately indifferent. The bar, however, is much higher because the risk must be much more apparent. *See, e.g., Scinto v. Stansberry*, 841 F.3d 219, 232 (4th Cir. 2016) (finding there was sufficient circumstantial evidence—inmate was vomiting blood for several days—to put the prison officials on notice of risk to inmate's health); *Lolli v. County of Orange*, 351 F.3d 410, 420–21 (9th Cir. 2003) (finding that prison officials knew of risk to diabetic inmate who had not received insulin due to obvious acute symptoms).

state a claim for deliberate indifference against Hill, and the Court will dismiss Count Four against him.

3. Stone & Tyler

For deliberate indifference claims against medical personnel, “an assertion of mere negligence or malpractice is not enough to constitute [a constitutional] violation.” *Taylor*, 105 F. Supp. 2d at 487 (citing *Estelle*, 429 U.S. at 106; *Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Miltier v. Beorn*, 896 F.2d 848, 851–52 (4th Cir. 1990), *overruled in part on other grounds by Farmer*, 511 U.S. at 837). Medical personnel, however, do not benefit from the apparent leniency afforded non-medical personnel for non-obvious health risks. *See Moss*, 19 F.4th at 625. To satisfy the deliberate indifference test, “the treatment given must be ‘so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.’” *Hixson v. Moran*, 1 F.4th 297, 303 (4th Cir. 2021) (quoting *Miltier*, 896 F.2d at 851). For a deliberate indifference claim arising from a delay in care, a plaintiff must allege facts that suggest the delay resulted in “substantial harm.” *Oden v. Wilson*, No. 3:17cv489, 2019 WL 6357247, at *10 (E.D. Va. Nov. 27, 2019). A plaintiff may satisfy the substantial harm requirement through “lifelong handicap, permanent loss, or considerable pain.” *Id.* (quoting *Garrett v. Stratman*, 254 F.3d 946, 950 (10th Cir. 2001)). Deliberate indifference cases arising from treatment for Williams’s particular medical condition require “a careful evaluation of all the facts and circumstances surrounding the allegations.” *Taylor*, 105 F. Supp. 2d at 488. “[T]he mere fact that [a] correctional facility fails to provide an inmate with prescribed medication on a timely basis is not sufficient to state a claim of deliberate indifference.” *Id.* at 487.

Williams’s allegations concerning Tyler and Stone do not indicate a state of mind beyond mere negligence. While a plaintiff may use circumstantial evidence to satisfy the subjective prong

of deliberate indifference, *Coppage v. Mann*, 906 F. Supp. 1025, 1039 (E.D. Va. 1995) (quoting *Farmer*, 511 U.S. at 842), Williams does not allege facts that suggest Tyler knew of the delay in medication. He does not allege that he ever contacted or spoke with Tyler to put him on actual notice. (ECF No. 16 ¶ 13.) Likewise, Williams does not allege that Stone knew of the delays in his medication. He alludes to her presence in his meeting with Mallard, but he does not explain what they discussed at that meeting beyond privacy concerns. (ECF No. 16 ¶ 68 (“On July 30, 2021, ... Mallard advised [Williams] that there is not a deputy that deals with HIPPA violations”).) Thus, the Court will dismiss Count Four against Tyler and Stone.

4. *White*

White was the first person that Williams spoke to concerning his missed doses of medication and lack of bloodwork during his time at the Chesapeake Correctional Center. (ECF No. 16 ¶¶ 25–29.) Thus, White had actual knowledge of Williams’s grievances. Further, because Williams alleges that he explained to White his increased susceptibility to illness, (*id.* ¶ 26), she may have known of the substantial risk to his health. Her alleged response of “that is not my problem,” (*id.* ¶ 27), suggests a state of mind more culpable than “mere negligence or malpractice.” See *Taylor*, 105 F. Supp. 2d at 487. Additionally, Williams alleges that he contracted COVID-19 due to increased vulnerability after missing several doses of his medication and that he suffered several symptoms. (ECF No. 16 ¶ 76.) This raises the inference that his delay in care resulted in “substantial harm.” See *Oden*, 2019 WL 6357247, at *10. It remains unclear whether White’s conduct was “so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.” *Miltier*, 896 F.2d at 851. But to adequately assess White’s conduct requires reference to an appropriate standard of care, see *Badu v. Broadwell*, No. 5:11-CT-3192-F, 2013 WL 286262, at *5 (E.D.N.C. Jan. 24, 2013) (denying doctor's motion to

dismiss because his “defense that his treatment nevertheless exceeded the constitutional minimum is better argued upon a more fully developed record in summary judgment proceedings”). Thus, it would be premature for the Court to dismiss Williams’s claim without more information. Accordingly, the Court will deny White’s motion to dismiss Count Four.

5. *James*

Though James never spoke with Williams, Williams can satisfy the subjective prong of the deliberate indifference test with circumstantial evidence. *See Coppage*, 906 F. Supp. at 1039 (quoting *Farmer*, 511 U.S. at 842).¹³ The fact that Williams requested that White inform James specifically of the lack of bloodwork suggests that James knew about Williams’s medical needs. (See ECF No. 16 ¶ 28.) Furthermore, Hill informed James of Williams’s grievances regarding his missed medication, and Hill said James would come to speak with Williams. (*Id.* ¶¶ 45–47.) The fact that James never spoke with Williams, (*id.* ¶ 48), raises the inference that James ignored Williams’s grievances. Without knowing the reason for the delays, the Court should not dismiss Williams’s claim against James at the pleading stage:

The common thread throughout [cases concerning inadequate treatment in prison for Williams’s particular medical condition] is a careful evaluation of all the facts and circumstances surrounding the allegations of denial of proper medical care to determine whether the defendant acted with deliberate indifference or acted upon informed medical judgment, even if that judgment was in error.

Taylor, 105 F. Supp. 2d at 488. Because James’s choice to ignore him may have caused the delay in medication, Williams has adequately stated a constitutional claim of deliberate indifference against James. Thus, the Court will deny James’s motion to dismiss Count Four.

¹³ The fact that Williams “received 320 doses of [his] medication while ... incarcerated,” (ECF No. 72 ¶ 18 (emphasis in original)), does not absolve James of constitutional liability, *see De’Ionia v. Johnson*, 708 F.3d 520, 526 (4th Cir. 2013) (“[J]ust because [the defendants] have provided [the plaintiff] with some treatment consistent with the ... Standards of Care, it does not follow that they have necessarily provided her with constitutionally adequate treatment.”).

Applicant Details

First Name **Christopher**
 Last Name **Scott**
 Citizenship Status **U. S. Citizen**
 Email Address cscott@jd23.law.harvard.edu
 Address

Address**Street****29 Montrose Ave., Apt. 3A****City****Brooklyn****State/Territory****New York****Zip****11206****Country****United States**

Contact Phone Number **6368754442**

Applicant Education

BA/BS From **The University of British Columbia, Canada**

Date of BA/BS **November 2017**

JD/LLB From **Harvard Law School**

<https://hls.harvard.edu/dept/ocs/>

Date of JD/LLB **May 26, 2023**

Class Rank **School does not rank**

Law Review/Journal **Yes**

Journal(s) **Harvard Civil Rights - Civil Liberties Law Review**

Harvard Business Law Review

Moot Court Experience **Yes**

Moot Court Name(s) **Ames Moot Court**

Bar Admission**Prior Judicial Experience**

| | |
|--------------------------------------|-----|
| Judicial Internships/ Externships | Yes |
| Post-graduate Judicial Law Clerk | No |

Specialized Work Experience

Recommenders

Goldsmith, Jack
jgoldsmith@law.harvard.edu
617-384-8159
Klein, Alexandra
aklein1@stmarytx.edu
210-431-8056
Forton, Kenneth
ken.forton@mass.gov
617-276-2821

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Christopher Scott

29 Montrose Ave. 3A, Brooklyn, NY 11206
cscott@jd23.law.harvard.edu • (636) 875-4442

June 16, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to express my interest in a clerkship in your chambers beginning in 2025 or 2026. I recently graduated from Harvard Law School and have accepted an offer to join the New York office of Gibson, Dunn & Crutcher this fall.

As you can see from my materials, I will bring research, writing, and editing experience to this role. While at Harvard, I served as a Lead Article Editor on the *Harvard Civil Rights-Civil Liberties Law Review* and the editor of *Harvard Business Law Review*'s student blog. I also sharpened my judicial research and writing skills while interning at the Massachusetts Division of Administrative Law Appeals and the Supreme Court of Virginia's Office of the Chief Staff Attorney. I will continue to improve these skills over the summer following law school as a research assistant to Climenko Fellow Andrea Olson for her upcoming article on federal equity.

Before law school, I developed strong time management and organizational skills while working as a project coordinator and legal assistant. I also had the pleasure of serving as a Community Economic Development Volunteer with the Peace Corps in Peru.

Attached are my resume, academic transcripts, and writing sample. The following individuals will send letters of recommendation separately on my behalf:

Prof. Jack Goldsmith
Harvard Law School
jgoldsmith@law.harvard.edu
(617) 384-8159

Prof. Alexandra Klein
St. Mary's School of Law
aklein1@stmarytx.edu
(210) 431-8056

Mag. Kenneth Forton
Massachusetts Division of
Administrative Law Appeals
ken.forton@mass.gov
(781) 397-4700

Thank you for your consideration.

Sincerely,

Christopher Scott

Enclosures

Christopher Scott

29 Montrose Ave. 3A, Brooklyn, NY 11206
cscott@jd23.law.harvard.edu • (636) 875-4442

EDUCATION

Harvard Law School, Cambridge, MA

J.D., May 2023 (*Transferred from Washington & Lee University School of Law*)

Activities: *Harvard Civil Rights-Civil Liberties Law Review*, Lead Article Editor

Harvard Business Law Review, Current Accounts Editor

Andrea Olson (Climenko Fellow and Lecturer on Law), Research Assistant (Summer 2023)

Ames Moot Court Competition (Top 16 teams)

First Class; Lambda

University of British Columbia, Vancouver, BC

B.A., November 2017 (*Transferred from Seton Hall University*)

EXPERIENCE

Gibson, Dunn & Crutcher, New York, NY

Associate (Expected), September 2023

Summer Associate, May – July 2022

- Researched and wrote memoranda on issues involving due process, standing, and equitable tolling
- Reviewed arbitral record to highlight facts relevant to enforcement proceedings in federal district court
- Examined client records and prepared presentation for U.S. Department of Justice

Massachusetts Division of Administrative Law Appeals, Malden, MA

Intern, September – November 2022

- Attended hearings, reviewed party submissions, and drafted decisions

Melchionna PLLC, New York, NY

Summer Associate, June – July 2021

Legal Assistant, April 2019 – August 2020

- Introduced licensing and tax obligations management system, ensuring client met monthly filing deadlines in 25+ jurisdictions
- Wrote blog posts on new legislation/regulations to inform clients of industry developments
- Drafted, proofread, and translated correspondence with government agencies

Supreme Court of Virginia, Office of the Chief Staff Attorney, Richmond, VA

Intern, May – June 2021

- Analyzed trial court records and drafted objective memoranda analyzing criminal appeals
- Researched criminal code changes and assembled report that will assist staff attorneys with future appeals

Be More, Inc., New York, NY

Project Coordinator, October 2018 – April 2019

- Deployed implicit bias survey at major regional hospital and analyzed results to create mobile application-based implicit bias training curriculum
- Launched company's phone service, data management system, and project management tool

Peace Corps, Villa Rica, Peru

Business Development Volunteer, March – August 2018

- Taught 6-week program to improve local English teachers' language skills
- Facilitated 20 entrepreneurship and financial education workshops to empower rural business owners

INTERESTS

- Commissioner, Harvard Graduate Intramural Sports Committee
- Urban design & public transportation
- Foreign languages (intermediate proficiency in Spanish and Italian)

Print Date: 05/17/2023

Page: 1 of 1

Student: Christopher Scott

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116



SSN: XXX-XX-9891

Entry Date: 08/17/2020

Date of Birth: 05/26/XXXX

Academic Level: Law

2020-2021 Law Fall

08/17/2020 - 11/24/2020

| Course | Course Title | Grade | Credit Att | Credit Earn | Grade Pts | Repeat |
|---------|-----------------|-------|------------|-------------|-----------|--------|
| LAW 109 | CIVIL PROCEDURE | A | 4.00 | 4.00 | 16.00 | |
| LAW 140 | CONTRACTS | A | 4.00 | 4.00 | 16.00 | |
| LAW 163 | LEGAL RESEARCH | A | 0.50 | 0.50 | 2.00 | |
| LAW 165 | LEGAL WRITING I | A | 2.00 | 2.00 | 8.00 | |
| LAW 190 | TORTS | A | 4.00 | 4.00 | 16.00 | |

Term GPA: 4.000

Totals:

14.50

14.50

58.00

Cumulative GPA: 4.000

Totals:

14.50

14.50

58.00

2020-2021 Law Spring

01/11/2021 - 04/27/2021

| Course | Course Title | Grade | Credit Att | Credit Earn | Grade Pts | Repeat |
|---------|--------------------|-------|------------|-------------|-----------|--------|
| LAW 130 | CONSTITUTIONAL LAW | A- | 4.00 | 4.00 | 14.68 | |
| LAW 150 | CRIMINAL LAW | A | 3.00 | 3.00 | 12.00 | |
| LAW 163 | LEGAL RESEARCH | A | 0.50 | 0.50 | 2.00 | |
| LAW 166 | LEGAL WRITING II | A | 2.00 | 2.00 | 8.00 | |
| LAW 179 | PROPERTY | A | 4.00 | 4.00 | 16.00 | |
| LAW 195 | TRANSNATIONAL LAW | A | 3.00 | 3.00 | 12.00 | |

Term GPA: 3.920

Totals:

16.50

16.50

64.68

Cumulative GPA: 3.957

Totals:

31.00

31.00

122.68

| Law Totals | Credit Att | Credit Earn | Cumulative GPA |
|-------------------|------------|-------------|----------------|
| Washington & Lee: | 31.00 | 31.00 | 3.957 |
| External: | 0.00 | 0.00 | |
| Overall: | 31.00 | 31.00 | 3.957 |

Program: Law

End of Official Transcript

WASHINGTON AND LEE UNIVERSITY TRANSCRIPT KEY

Founded in 1749 as Augusta Academy, the University has been named, successively, Liberty Hall (1776), Liberty Hall Academy (1782), Washington Academy (1796), Washington College (1813), and The Washington and Lee University (1871). W&L has enjoyed continual accreditation by or membership in the following since the indicated year: The Commission on Colleges of the Southern Association of Colleges and Schools (1895); the Association of American Law Schools (1920); the American Bar Association Council on Legal Education (1923); the Association to Advance Collegiate Schools of Business (1927); the American Chemical Society (1941); the Accrediting Council for Education in Journalism and Mass Communications (1948), and Teacher Education Accreditation Council (2012).

The **basic unit of credit** for the College, the Williams School of Commerce, Economics and Politics, and the School of Law is equivalent to a semester hour.

The **undergraduate calendar** consists of three terms. From 1970-2009: 12 weeks, 12 weeks, and 6 weeks of instructional time, plus exams, from September to June. From 2009 to present: 12 weeks, 12 weeks, and 4 weeks, September to May.

The **law school calendar** consists of two 14-week semesters beginning in August and ending in May.

Official transcripts, printed on blue and white safety paper and bearing the University seal and the University Registrar's signature, are sent directly to individuals, schools or organizations upon the written request of the student or alumnus/a. Those issued directly to the individual involved are stamped "Issued to Student" in red ink. ***In accordance with The Family Educational Rights and Privacy Act of 1974, as amended, the information in this transcript is released on the condition that you permit no third-party access to it without the written consent from the individual whose record it is. If you cannot comply, please return this record.***

Undergraduate

Degrees awarded: Bachelor of Arts in the College (BA); Bachelor of Arts in the Williams School of Commerce, Economics and Politics (BAC); Bachelor of Science (BS); Bachelor of Science with Special Attainments in Commerce (BSC); and Bachelor of Science with Special Attainments in Chemistry (BCH).

| Grade | Points | Description |
|-------|--------|---|
| A+ | 4.00 | } Superior. |
| A | 4.00 | |
| A- | 3.67 | |
| B+ | 3.33 | } Good. |
| B | 3.00 | |
| B- | 2.67 | |
| C+ | 2.33 | } Fair. |
| C | 2.00 | |
| C- | 1.67 | |
| D+ | 1.33 | } Marginal. |
| D | 1.00 | |
| D- | 0.67 | |
| E | 0.00 | Conditional failure. Assigned when the student's class average is passing and the final examination grade is F. Equivalent to F in all calculations |
| F | 0.00 | Unconditional failure. |

Grades not used in calculations:

| | | |
|-----------|---|--|
| I | - | Incomplete. Work of the course not completed or final examination deferred for causes beyond the reasonable control of the student. |
| P | - | Pass. Completion of course taken Pass/Fail with grade of D- or higher. |
| S, U | - | Satisfactory/Unsatisfactory. |
| WIP | - | Work-in-Progress. |
| W, WP, WF | - | Withdrew, Withdrew Passing, Withdrew Failing. Indicate the student's work up to the time the course was dropped or the student withdrew. |

Grade prefixes:

| | |
|---|---|
| R | Indicates an undergraduate course subsequently repeated at W&L (e.g. RC-). |
| E | Indicates removal of conditional failure (e.g. ED = D). The grade is used in term and cumulative calculations as defined above. |

Ungraded credit:

Advanced Placement: includes Advanced Placement Program, International Baccalaureate and departmental advanced standing credits.

Transfer Credit: credit taken elsewhere while not a W&L student or during approved study off campus.

Cumulative Adjustments:

Partial degree credit: Through 2003, students with two or more entrance units in a language received reduced degree credit when enrolled in elementary sequences of that language.

Dean's List: Full-time students with a fall or winter term GPA of at least 3.400 and a cumulative GPA of at least 2.000 and no individual grade below C (2.0). Prior to Fall 1995, the term GPA standard was 3.000.

Honor Roll: Full-time students with a fall or winter term GPA of 3.750. Prior to Fall 1995, the term GPA standard was 3.500.

University Scholars: This special academic program (1985-2012) consisted of one required special seminar each in the humanities, natural sciences and social sciences; and a thesis. All courses and thesis work contributed fully to degree requirements.

Law

Degrees awarded: Juris Doctor (JD) and Master of Laws (LLM)

| Numerical | Letter | Grade* | Grade** | Points | Description |
|-----------|--------|--------|---------|--------|---|
| 4.0 | A | | | 4.00 | |
| | A- | | | 3.67 | |
| 3.5 | | | | 3.50 | |
| | B+ | | | 3.33 | |
| 3.0 | B | | | 3.00 | |
| | B- | | | 2.67 | |
| 2.5 | | | | 2.50 | |
| | C+ | | | 2.33 | |
| 2.0 | C | | | 2.00 | |
| | C- | | | 1.67 | |
| 1.5 | | | | 1.50 | This grade eliminated after Class of 1990. |
| | D+ | | | 1.33 | |
| 1.0 | D | | | 1.00 | A grade of D or higher in each required course is necessary for graduation. |
| | D- | | | 0.67 | Receipt of D- or F in a required course mandates repeating the course. |
| 0.5 | | | | 0.50 | This grade eliminated after the Class of 1990. |
| 0.0 | F | | | 0.00 | Receipt of D- or F in a required course mandates repeating the course. |

Grades not used in calculations:

| | | | |
|----|-----|---|--|
| - | WIP | - | Work-in-progress. Two-semester course. |
| I | I | - | Incomplete. |
| CR | CR | - | Credit-only activity. |
| P | P | - | Pass. Completion of graded course taken Pass/Not Passing with grade of 2.0 or C or higher. Completion of Pass/Not Passing course or Honors/Pass/Not Passing course with passing grade. |
| - | H | - | Honors. Top 20% in Honors/Pass/Not Passing courses. |
| F | - | - | Fail. Given for grade below 2.0 in graded course taken Pass/Fail. |
| - | NP | - | Not Passing. Given for grade below C in graded course taken Pass/Not Passing. Given for non-passing grade in Pass/Not Passing course or Honors/Pass/Not Passing course. |

* Numerical grades given in all courses until Spring 1997 and given in upperclass courses for the Classes of 1998 and 1999 during the 1997-98 academic year.

** Letter grades given to the Class of 2000 beginning Fall 1997 and for all courses beginning Fall 1998.

Cumulative Adjustments:

Law transfer credits - Student's grade-point average is adjusted to reflect prior work at another institution after completing the first year of study at W&L.

Course Numbering Update: Effective Fall 2022, the Law course numbering scheme went from 100-400 level to 500-800 level.

Office of the University Registrar
Washington and Lee University
Lexington, Virginia 24450-2116
phone: 540.458.8455
email: registrar@wlu.edu


University Registrar

Harvard Law School

Date of Issue: May 26, 2023
Not valid unless signed and sealed
Page 1 / 1

Record of: Christopher Andrew Scott
Current Program Status: Graduated
Degree Received: Juris Doctor May 25, 2023
Pro Bono Requirement Complete

| JD Program | | | | Fall 2022 Total Credits: 13 | |
|--|---|----|---|--|--|
| First year completed at Washington and Lee University. | | | | Winter 2023 Term: January 01 - January 31 | |
| Fall 2021 Term: September 01 - December 03 | | | | Independent Writing H 2 | |
| | | | | Goldsmith, Jack | |
| | | | | Winter 2023 Total Credits: 2 | |
| 2000 | Administrative Law | P | 4 | Spring 2023 Term: February 01 - May 31 | |
| | | | | Advanced Legal Research H 2 | |
| 2048 | Freeman, Jody | P | 4 | Kennedy, Jocelyn | |
| | | | | Antitrust Law P 4 | |
| 2146 | Corporations | H | 2 | Kaplow, Louis | |
| | | | | Forced Arbitration and the American Civil Justice System H 2 | |
| 2146 | Spamann, Holger | H | 2 | Gupta, Deepak | |
| | | | | Legal Profession H* 3 | |
| 2219 | Law and Economics | P | 4 | Okediji, Ruth | |
| | | | | * Dean's Scholar Prize | |
| | | | | Spring 2023 Total Credits: 11 | |
| | | | | Total 2022-2023 Credits: 26 | |
| | | | | Total JD Program Credits: 54 | |
| Fall 2021 Total Credits: 14 | | | | | |
| Winter 2022 Term: January 04 - January 21 | | | | | |
| 2050 | Criminal Procedure: Investigations | P | 3 | | |
| | | | | | |
| Winter 2022 Total Credits: 3 | | | | | |
| Spring 2022 Term: February 01 - May 13 | | | | | |
| 2086 | Federal Courts and the Federal System | P | 5 | End of official record | |
| | | | | | |
| 8035 | Predatory Lending and Consumer Protection Clinic | H | 4 | | |
| | | | | | |
| 2204 | Bertling, Roger | H | 2 | | |
| | | | | | |
| Spring 2022 Total Credits: 11 | | | | | |
| Total 2021-2022 Credits: 28 | | | | | |
| Fall 2022 Term: September 01 - December 31 | | | | | |
| 3145 | Advanced Topics in Federal Courts | H | 2 | | |
| | | | | | |
| 2079 | Goldsmith, Jack | P | 4 | | |
| | | | | | |
| 8099 | Evidence | P | 4 | | |
| | | | | | |
| 8099 | Schulman, Emily | CR | 3 | | |
| | | | | | |
| 3141 | Independent Clinical - Massachusetts Division of Administrative Law Appeals | H | 2 | | |
| | | | | | |
| 3141 | Gregory, Michael | H | 2 | | |
| | | | | | |
| 3202 | The Judicial Role in a Democracy | H | 2 | | |
| | | | | | |
| 3202 | Abella, Rosalie Silberman | H | 2 | | |
| | | | | | |
| | The United States Supreme Court | H | 2 | | |
| | | | | | |
| | Sunstein, Cass | H | 2 | | |


Assistant Dean and Registrar

HARVARD LAW SCHOOL
Office of the Registrar
1585 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-4612
www.law.harvard.edu
registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
LL.M. (Master of Laws)
S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present

| | |
|------------------------|--|
| <i>Summa cum laude</i> | To a student who achieves a prescribed average as described in the <u>Handbook of Academic Policies</u> or to the top student in the class |
| <i>Magna cum laude</i> | Next 10% of the total class following <i>summa</i> recipient(s) |
| <i>Cum laude</i> | Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients |

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

| | |
|--------------------------|------------------------|
| <u>1969 to June 1998</u> | <u>General Average</u> |
| <i>Summa cum laude</i> | 7.20 and above |
| <i>Magna cum laude</i> | 5.80 to 7.199 |
| <i>Cum laude</i> | 4.85 to 5.799 |

June 1999 to May 2010

| | |
|------------------------|--|
| <i>Summa cum laude</i> | General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class) |
| <i>Magna cum laude</i> | Next 10% of the total class following <i>summa</i> recipients |
| <i>Cum laude</i> | Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients |

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).


Assistant Dean and Registrar

June 20, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Chris Scott for a clerkship in your chambers.

Chris did his first law school year at Washington & Lee, where he got all As and was invited to join the Washington and Lee Law Review. At Harvard he has a basically even split of Hs and Ps. And he served as the Lead Article Editor of the Harvard Civil Rights-Civil Liberties Law Review.

One of the Hs was in my Advanced Federal Courts seminar, which is where I got to know him. He was outstanding in the seminar. He wrote eight excellent essays on very complex federal courts doctrine issues related to Erie and federal common law. He writes clearly and has a mastery of federal courts doctrine. And he is unusually thoughtful in taking a non-dogmatic approach to legal issues and following where the evidence and legal logic lead him. Chris also wrote a truly outstanding paper on the topic of how Erie issues operate in other federal systems outside the United States. The paper displayed a deep knowledge of Erie and related doctrines, and a surprising grasp of federal systems in Germany, Canada, and Australia. The paper was, like his seminar essays, beautifully written. And it showed great skill in making complex foreign procedural systems accessible and in comparing them to the U.S. system. I learned an unusual amount from the paper.

Chris will make an outstanding law clerk. He loves hard legal problems and he is great at breaking them down and analyzing them. In the seminar he showed that he listened well and engaged respectfully and constructively with others' arguments. He is a lovely young man—respectful, polite, genuinely curious, and empathetic. And he will come to you with significant litigation experience at Gibson Dunn under his belt.

Please contact me if you have questions.

Sincerely,

Jack L. Goldsmith

Jack Goldsmith - jgoldsmith@law.harvard.edu - 617-384-8159

June 16, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Chris Scott for a judicial clerkship in your chambers. I've known Chris since he was a first-year law student at Washington & Lee University School of Law. At the time, I was employed as a Visiting Assistant Professor at W&L Law. I have since accepted a position as an Assistant Professor of Law at St. Mary's University School of Law. Although Chris transferred to Harvard Law after his first year at W&L Law, he and I stayed in touch. I think Chris would make an excellent law clerk for the reasons discussed below.

I had the pleasure of teaching Chris in Constitutional Law. That particular group of 1Ls was a lively and talented group, but Chris stood out fairly early in the semester for his meticulous class preparation, active participation, intelligence, and the accuracy and thoughtfulness with which he approached class discussion. I was particularly impressed by Chris's assessment and discussion of The Slaughter-House Cases. He understood the ruling well and asked probing questions about the Privileges and Immunities Clause of the Fourteenth Amendment. Chris was fun to teach because he is a genuinely curious person and he had a real appreciation of the logic in judicial reasoning. Chris's ability to unpack the logical steps in judicial opinions consistently enhanced class discussion. I also appreciated Chris's thoughtful nature when we discussed complex topics in Constitutional Law. Students frequently disagree about certain topics and the application of legal doctrines. Chris was respectful of colleagues' differing points of view, but he also didn't hesitate to persuasively argue his own perspectives, usually with accurate reference to legal principles.

I came to know Chris better through his regular visits to my office hours, where we had further in-depth discussion of course topics as well as their broader applications. Chris had a special interest in the historical context of constitutional law topics and he had read widely in the subject area. He seems to be a natural academic. Chris received an A- in Constitutional Law. Although most students would have been delighted with that grade, Chris sought feedback on his performance and areas of improvement. This was not a meeting in which Chris wanted praise for how well he had done. Instead, Chris wanted to know how to make his legal analysis even better. He has a high personal standard and was happy to receive constructive feedback to improve his performance.

I admit that I was disappointed when I learned that Chris was transferring to Harvard. He had been a fantastic student and I thought that he was a real asset to the W&L Law community. I had also hoped to hire him as a research assistant. I was confident, however, that Chris would continue to be successful wherever he attended law school. I was pleased to learn about Chris's participation with the Harvard Civil Rights–Civil Liberties Law Review and the Harvard Business Law Review. I had encouraged Chris to write on to the Washington and Lee Law Review, which he successfully did in a competitive process that factored in grades, writing skill, and Bluebooking before he decided to transfer.

From our conversations, it is evident how much Chris enjoys legal writing and research. He was particularly interested in understanding and tracing how legal doctrines develop. Chris is the sort of person who will thrive in a research and writing-oriented environment. He has strong personal discipline and is very much a self-starter. During our class discussions, I was impressed by Chris's commitment to clear legal reasoning and the dignity of all people before a court. He wanted to understand the practical implications of the decisions we discussed in Constitutional Law and how they would impact people's lives.

Chris has displayed outstanding professionalism and trustworthiness during all of our interactions. He is also a kind and thoughtful person. When I accepted the position at St. Mary's, Chris took the time to write me a very thoughtful congratulatory note even though he was no longer one of my current students—or even enrolled at W&L Law. I have heard similar anecdotes from his former classmates at W&L Law, who expressed how much they would miss him after he transferred. I'm also aware that Chris had served as a resource for other students who considered transferring to discuss his experience and offer guidance.

Chris was a pleasure to teach and I am thrilled that he's joining the legal profession. I'm extremely proud of everything that he's accomplished and I look forward to seeing everything he will accomplish. Please feel free to contact me at any time at 540-294-6552, 210-431-8056, or aklein1@stmarytx.edu if you have any questions or if there is any other information I can provide about Chris.

Sincerely,

Alexandra Klein
Assistant Professor of Law

Alexandra Klein - aklein1@stmarytx.edu - 210-431-8056

9 June 2023

re: *Recommendation for Christopher Scott*

Dear Judge:

I am writing on behalf of Christopher Scott, who is seeking a clerkship with you beginning in Fall 2024. I have known Chris for about a year now. He was a Fall 2022 intern for me at the Massachusetts Division of Administrative Law Appeals (DALA), where I have been an administrative magistrate for 15 years. I have been in charge of interns for our agency for the past 12 years. Chris ranks in the top 5% of the approximately 120 interns that I have supervised.

When I assign work to new interns, I usually start with a fairly straightforward assignment to help me gauge whether they are able to move on to something more challenging. Chris moved through that first assignment so quickly that I did not have a chance to prepare a second assignment yet. This set a theme for the term: keep up with Chris. (At this point, I should mention that interns are an integral part of our production line. With uncertain state budgets, etc. a competent intern can make a serious contribution to our work.) Our interns almost exclusively write whole decision drafts. Usually, the first draft requires a significant amount of editing and even re-writing. I was surprised after reviewing Chris's drafts because they did not require much editing and certainly no wholesale rewriting. For the rest of the term, I felt confident when Christ handed me a draft. He was productive, as well: 6 decision drafts while working only 10 hours per week for the Fall term.

Despite our name, which has "appeals" in it, we conduct *de novo* administrative hearings. This can be difficult for interns to wrap their heads around. They do not understand at first that our agency makes findings of fact. Perhaps this is because facts are always a given in law school. Little, if anything, is said outside of evidence class how facts are generated in our legal process. Drafting findings of fact is confounding for many interns. They fail to synthesize the testimony and the documents. They can't make choices among the bits of evidence based on the magistrates' initial conferences. Chris had no trouble with this. He was able to chew through three inches of exhibits and testimony in no time.

You can see that Chris's resume is impressive, but a few things stand out to me. First, he strives for excellence. For both his undergrad and law school, he transferred to better schools after he proved himself at his initial choices. Second, he goes where the opportunity is. His schooling has taken him to New Jersey, British Columbia, Virginia, and Massachusetts. His work experience is largely in New York, but he challenged himself with the Peace Corps in Peru. Third, Chris has significant writing experience already, at the *Harvard Civil Rights-Civil Liberties Law Review*, the *Harvard Business Law Review*, and his various work experiences.

I know this fall he is headed to Gibson, Dunn & Crutcher, but I am curious where he ends up afterward. I say that because I can see that he ultimately wants to use his degree for some public good, as well. His experience in the Peace Corps and concerns with bias and urban design and public transportation tell me he will spend at least part of his career in public service.

Finally, I had the opportunity to get to know Chris personally and socially, as we ate lunch together when he was in the office. He is genuine and real. I can tell that he will take his obligations as an attorney seriously.

If you have any questions, please contact me at ken.forton@mass.gov, or call me at (781) 397-4724.

Sincerely,

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

Christopher Scott

29 Montrose Ave. 3A, Brooklyn, NY 11206
cscott@jd23.law.harvard.edu • (636) 875-4442

WRITING SAMPLE

Drafted Spring 2023

This writing sample is an excerpt from a 48-page independent writing project I completed under the supervision of Professor Jack Goldsmith. Because of its length, certain sections are omitted.

What remains below is representative of my analysis, although some writing may allude to sections of the paper that do not appear here. A full copy of this paper is available upon request.

This document is entirely my own work product.

**ERIE THROUGH A COMPARATIVE LENS: WHAT CAN THE UNITED STATES LEARN FROM
THE EXPERIENCE OF OTHER FEDERAL SYSTEMS?**

The constitutional rule enunciated in *Erie Railroad Co. v. Tompkins*¹ remains a source of great frustration for scholars, judges, and law students alike. It is simple enough to say that federal courts sitting in diversity must follow federal procedural law and state substantive law, but it is another entirely to draw the line between substance and procedure in practice. This difficulty has plagued our legal system for over 80 years, leading to countless law review articles announcing novel theories of federalism and constitutional law.² The Supreme Court has seemingly fared no better in its endeavor to articulate this distinction, deciding its most recent *Erie* doctrine case in a fractured multi-part opinion that transcends ideological lines.³

Noticeably absent from the *Erie* literature, however, is any investigation into whether the problem at the heart of the *Erie* doctrine similarly confounds judiciaries in other parts of the world. Given that there are approximately two dozen countries around the world with federal or confederal constitutional features, it seems highly unlikely that we are alone in our quest to turn *Erie*'s holding into a more principled doctrine.⁴ Starting from this hypothesis, this paper investigates the extent to which three other federal systems have encountered the same issue *Erie* purportedly resolved and analyzes how those countries have managed the issue or avoided it altogether. It concludes that, at least with respect to the countries studied here, the United States is singular in its susceptibility to the *Erie* problem due to a unique convergence of several factors discussed more thoroughly below.

¹ 304 U.S. 64 (1938).

² See, e.g., Paul J. Mishkin, *Some Further Last Words on Erie—The Thread*, 87 HARV. L. REV. 1682 (1974); John Hart Ely, *The Irrepressible Myth of Erie*, 87 HARV. L. REV. 693 (1974).

³ *Shady Grove Orthopedic Assocs. P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010).

⁴ See *Countries*, FORUM OF FEDERATIONS (last visited Apr. 16, 2023), <https://forumfed.org/countries>.

Part I reviews *Erie*'s basic holding and the evolution of the Erie doctrine in the decades following the decision. The goal of this review is to underscore the doctrine's basic elements, the historical and structural components that led to its creation, and the questions that continue to befuddle the Supreme Court. Part II studies the history and constitutional structure of three comparable federal democracies (Australia, Canada, and Germany), highlighting the contours of each country's federal system with a focus on the laws regulating their judicial systems. Each case study will conclude by assessing whether the studied country possesses the components necessary for the Erie problem to arise and, if so, how it has managed to overcome the problem. Part III juxtaposes the federal systems explored in the preceding two parts to determine why the American judiciary is uniquely susceptible to the Erie problem. And Part IV briefly discusses what can be learned from other federal systems about resolving the Erie problem in the United States and the feasibility of implementing those solutions domestically.

[Part I omitted]

II. HOW OTHER COUNTRIES HAVE MANAGED THE ERIE PROBLEM

There are roughly 25 federal countries in the world today.⁵ Nine of these countries, including the United States, are former British subjects that follow a common law or mixed common law legal tradition.⁶ It is thus conceivable that at least one other country on this list has encountered some version of the Erie problem or possesses the necessary structural components for it to occur. This Part delves into the history and judicial structure of three of these countries

⁵ See *id.*

⁶ Compare *id.* (listing all federal countries in the world), with Memorandum from Federation of Law Societies of Canada, National Committee on Accreditation (June 2021) (listing all common law jurisdictions), <https://nca.legal/wp-content/uploads/2021/10/NCA-Jurisdictions-Policies-Oct-2021.pdf>.

and explores whether and to what extent the Erie problem can be observed in their jurisprudence. By analyzing these peer systems, I hope to uncover feasible solutions that the U.S. Congress or Supreme Court could implement domestically to resolve this issue once and for all.

Accounting for the strength of judicial federalism and democratic tradition, I have selected Australia, Canada, and Germany for further study. Each of these countries is home to both national and subnational courts that exercise some amount of lawmaking power.⁷ Moreover, these countries are often studied alongside the United States in the field of comparative law for a reason: the similarity of our experience with federalism, our shared democratic values, and the similarity of our basic constitutional structures make them useful benchmarks for drawing comparisons and inspiration. If the Erie doctrine is an inevitable feature of federalism or separation of powers, it should also be detectable in the jurisprudence of these peer countries.

Indeed, as this Part demonstrates, all three possess the requisite structural components for Erie to occur. Only the United States, however, struggles to find its way out of the Erie maze, principally due to the Supreme Court's reliance on the substance/procedure dichotomy.⁸ Australia, by contrast, preempted the issue through legislation that mirrors the Conformity Act,⁹ which governed the American federal judiciary between 1872 and 1934, while the apex courts of Canada and Germany maneuvered around the Erie issue through constitutional interpretation.¹⁰

Each of these case studies begins with a brief overview of the countries' formation, followed by an examination of the structure of their governments. This analysis focuses primarily on the judiciary, its relationship with the legislature, and the visions of federalism and separation of powers our founders shared. Along the way, I will also highlight basic features of

⁷ See *infra* Part II.A–C.

⁸ See *infra* Part III.A.

⁹ Conformity Act of 1872, ch. 255, § 5, 17 Stat. 196, 197 (repealed 1934).

¹⁰ See *infra* Part II.A–C.

each country's judiciary that resemble our own and features that do not. A more thorough exploration of what makes the American judiciary unique will occur in Part III.

What I hope will become apparent by the end of this discussion is that the Erie problem is not the result of any one particular feature of American federalism or separation of powers; after all, Australia, Canada, and Germany were all, in one way or another, inspired by the American Constitution. Rather it is a unique combination of these features in tandem with an equivocal Supreme Court and a paralyzed federal legislature that no other country shares.

A. *Australia*

Modern Australia emerged in 1901 as a federation of British colonies. Beginning with the establishment of New South Wales in 1788, British presence on the continent continued to grow over the next century, resulting in six distinct colonies, each with considerable political autonomy.¹¹ By the late 19th century, each colony had developed a functioning government—some even possessing a self-written constitution—with a mature judicial system.¹²

Spurred by encroaching foreign colonial powers and a growing sense of national identity, officials from the six colonies met in a series of conventions throughout the 1890s to discuss terms for uniting into a single federation.¹³ Like the Constitutional Convention in the United States, the relationship between the established colonial governments and the new federal government occupied a central role in the debates at these conventions.¹⁴ In fact, similarities between the founding of America and Australia were so stark that Alfred Deakin, a key leader of the Australian federation movement, considered James Bryce's *The American Commonwealth*

¹¹ See GABRIELLE APPLEBY ET AL., JUDICIAL FEDERALISM IN AUSTRALIA: HISTORY, THEORY, DOCTRINE, AND PRACTICE 10, 22–29 (2021).

¹² *Id.*

¹³ *Id.* at 34–47.

¹⁴ See *id.* at 41–43 (discussing the Framers' initial debates about the distribution of legislative, executive, and judicial power).

mandatory reading for all delegates to the conventions.¹⁵ Andrew Inglis Clark, a co-drafter of the Australian Constitution, also urged delegates to take inspiration from the American Constitution rather than the Canadian Constitution because the former better represented “federation in the true sense of the word.”¹⁶

The strong American influence at these conventions produced a judicial structure that mirrors the American judiciary in many significant respects. From the earliest days of the conventions, it was agreed that the new Australian nation would bifurcate its judiciary, utilizing state courts of general jurisdiction and federal courts of specific jurisdiction.¹⁷ The “heads” of federal jurisdiction established in the new constitution also roughly parallel the heads of federal jurisdiction in the United States, including—as particularly relevant here—suits between citizens of different states (i.e., diversity jurisdiction).¹⁸

Additionally, the delegates adopted the Madisonian Compromise, which, like Article III of the U.S. Constitution, vests the federal judicial power in the High Court of Australia, the country’s apex court, and “in such other federal courts as the Parliament creates.”¹⁹ The Constitution also grants the Commonwealth Parliament power to allocate jurisdiction over the nine heads among courts and make other laws “incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.”²⁰

¹⁵ *See id.* at 38.

¹⁶ *Id.*

¹⁷ *See id.* at 40–42 (describing early drafts of the Constitution).

¹⁸ *Id.* at 42–43.

¹⁹ *Australian Constitution* s 71.

²⁰ *See Australian Constitution* ss 51, 76–77.

Unlike the U.S. Constitution, however, the Australian Constitution integrates the federal and state judiciaries to a much greater extent. Section 73, for example, confers on the High Court appellate jurisdiction over “*all* judgments, decrees, orders, and sentences” of state supreme courts, not just those involving a federal question.²¹ Thus, the High Court’s appellate jurisdiction reaches matters that, in the United States, reside exclusively in the domain of state control.

The High Court’s status as the final interpreter of state and federal law had long raised questions about the uniformity of Australia’s common law. But these questions were put to rest when, in the 1997 case *Lange v. Australian Broadcasting Corporation*,²² the High Court finally resolved the question. Its decision recognized for the first time that “[t]here is but one common law in Australia which is declared by this Court as the final court of appeal.”²³ The High Court explicitly contrasted this position with the one taken in the U.S., where the common law of each state is distinct.²⁴ As a result of this ruling, all courts of Australia, regardless of their home jurisdictions, must apply the same rule of decision unless displaced by statute law or the state or federal constitutions.²⁵

A second major constitutional difference is that, in addition to the High Court and any lower courts the Parliament may establish, section 71 of the Australian Constitution extends federal judicial power to “such other courts as [the Parliament] invests with federal jurisdiction.”²⁶ This modification to the Madisonian Compromise—the “autochthonous expedient”—grants the Commonwealth Parliament unilateral power to draft state courts into

²¹ *Id.* at s 73 (emphasis added).

²² (1997) 189 CLR 520.

²³ *Lange v Austl Broad Corp* (1997) 189 CLR 520 at 563; see Liam Boyle, *An Australian August Corpus: Why There is Only One Common Law in Australia*, 27 BOND L. REV. 27, 27–28 (2015) (asserting that *Lange* was the first case in which the High Court endorsed the idea that a single national common law existed for all of Australia).

²⁴ *Lange*, 189 CLR at 563.

²⁵ *See id.* (“Within that single system of jurisprudence, the basic law of the Constitution provides the authority for the enactment of valid statute law and may have effect on the content of the common law.”).

²⁶ *Australian Constitution* s 71.

service of the federal judiciary.²⁷ Records from the conventions on federation indicate that at the time of Australia's founding, the Framers were concerned about the additional cost of maintaining a federal judiciary when the colonies already had robust court systems of their own.²⁸ Thus, in the Judiciary Act of 1903,²⁹ the country's first major piece of judicial legislation, the Parliament invested state courts with jurisdiction over most of the nine heads, excluding certain matters of national significance that it reserved for the High Court alone.³⁰ This permitted the federal government to delay creating a parallel federal judicial system until a specific need for one arose.

Crucially, the 1903 Act, which is still in effect today, confers federal jurisdiction on state courts in two parts: First, section 39(1) makes the High Court's original jurisdiction over the nine heads exclusive except as provided for by the Act, thereby stripping state courts of their power to adjudicate such matters.³¹ Second, section 39(2) restores jurisdiction to state courts over "all matters in which the High Court has original jurisdiction or in which original jurisdiction can be conferred upon it, except [the matters of national significance described above]"³² Although it may seem redundant to strip and then restore jurisdiction to adjudicate these issues, the High Court has interpreted this two-part maneuver as ensuring that state courts adjudicating cases under any of the nine heads do so exclusively as organs of the *federal* government.³³

²⁷ APPLEBY ET AL., *supra* note 11, at 45.

²⁸ *Id.* (citing letter from Josiah Symon, 1897 Convention Judiciary Comm. Chair, to Samuel Griffith, 1891 Convention Drafting Comm. Chair (Apr. 1, 1897) (on file with the National Library of Australia)).

²⁹ *Judiciary Act 1903* (Cth).

³⁰ *Id.* at s 39(2) (granting state courts jurisdiction over "all matters in which the High Court has original jurisdiction or in which original jurisdiction can be conferred upon it, except as provided in section 38").

³¹ *Id.* at s 39(1).

³² *Id.* at s 39(2).

³³ *Felton v Mulligan* (1971) 124 CLR 367; Mary Crock & Ronald McCallum, *Australia's Federal Courts: Their Origins, Structure and Jurisdiction*, 46 S.C.L. REV. 719, 746–47 (1995); Zelman Cowen, *Diversity Jurisdiction: The Australian Experience*, 7 RES JUDICATAE 1, 5–6 (1955) ("It appears that within the Australian structure there is no state jurisdiction in diversity suits at all.").

This scheme has proved fundamental to the development of the Australian judiciary. For much of Australia's history, section 39 has been a vital tool in preserving the domestic government's ability to interpret its own law.³⁴ Unlike the U.S., which severed legal ties with Great Britain following the Revolutionary War, Australia's movement toward independence occurred gradually over time with consent from both nations.³⁵ As a result of that ongoing relationship, the Judicial Committee of the British Privy Council effectively served as Australia's court of last resort until 1975 and maintained concurrent appellate authority over state supreme court judgments until 1986.³⁶ Before the Privy Council's appellate authority was terminated, however, section 39 was a crucial device for resisting its influence—especially as the nation began to recognize itself as distinctly Australian. In operation, section 39 designated all cases under the nine heads as “federal,” thereby forcing them through the High Court before appeal could be taken to the Privy Council. Though seemingly a minor procedural hurdle, this system bolstered Australian sovereignty by reinforcing home rule. Such control became particularly important as the nation's Australian identity developed in the latter half of the 20th century.

More recently, it has become clear that section 39 also greatly expands the Commonwealth Parliament's procedural control over the entire Australian judiciary. In the 2017 case *Rizeq v. Western Australia*,³⁷ the High Court explained that state parliaments lack the

³⁴ See APPLEBY ET AL., *supra* note 11, at 60–61 (“Section 39 of the *Judiciary Act* was drafted to address some of the chaos that might have resulted from having multiple appeal pathways, and to give effect to the policy position . . . that the High Court should stand between State courts and the Privy Council on constitutional cases.”).

³⁵ Although Australia became a self-governing dominion in 1901, the British government reserved certain executive powers over the new federation. See Helen Irving, *Making the Federal Commonwealth, 1890–1901* in THE CAMBRIDGE HISTORY OF AUSTRALIA 242, 242 (Alison Bashford & Stuart Macintyre eds., 2013). Full independence was only attained after both Australia and the U.K. passed the 1986 Australia Act, which recognized “Australia as a sovereign, independent and federal nation.” *Australia Act 1986* (Cth).

³⁶ See Crock & McCallum, *supra* note 33, at 735 (“In 1975, Parliament's limitations on this right eliminated such appeals for all practical purposes. Passage of the Australia Acts in 1986 finally extinguished appeals from state courts to the Privy Council.”).

³⁷ [2017] HCA 23.

constitutional authority to “regulate the exercise of federal jurisdiction” in their own courts (which, according to the Court includes but is not the same as court procedure).³⁸ Rather, any power to regulate courts in the exercise of such jurisdiction must come from the Commonwealth Parliament.³⁹ Considering how many cases are potentially swept up in all nine heads of federal jurisdiction, including any civil dispute between residents of different states, the implications of this holding are astounding in a federal nation. Although the Commonwealth Parliament has deferred to state procedural law since the passage of the 1903 Judiciary Act, it could at any time repeal the provision doing so.⁴⁰

Going beyond these statutory tools, the High Court has also done its part to expand federal control over the Australian judiciary. It has, for example, taken an extremely broad view of the cases in which federal jurisdiction attaches: since the 1940s, the Court has held that that federal jurisdiction attaches in any case where a claimed right “owes its existence to Federal law or depends upon Federal law for its enforcement,” even if the claim itself is asserted under state law. Federal jurisdiction also attaches permanently to any case where it once existed, even if that federal element is no longer present.⁴¹ Additionally, the Court began developing the doctrine of “accrued jurisdiction” in the 1970s—an extremely liberal take on what we in the U.S. call ancillary jurisdiction.⁴² Under this doctrine, federal jurisdiction reaches any “matter” in which

³⁸ See *Rizeq v Western Australia* [2017] HCA 23, 17, 30 (“The Parliament of the Commonwealth alone has power to regulate the exercise of federal jurisdiction.”).

³⁹ *Id.*

⁴⁰ See *Judiciary Act 1903* (Cth) s 79(1) (“The laws of each State or Territory, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State or Territory in all cases to which they are applicable.”).

⁴¹ APPLEBY ET AL., *supra* note 11, at 67 (citing *LNC Indus v BMW* (1983) 151 CLR 575; *Felton v Mulligan* (1971) 124 CLR 367).

⁴² *Id.* at 68–71.

there is or once was a federal claim arising out of the same substratum of facts.⁴³ Considering the breadth of federal jurisdiction and the growth of accrued jurisdiction, the Commonwealth Parliament's procedural control over Australian courts has grown extensively since the nation's founding, often at the expense of state control.

With this abbreviated description of the judiciary in mind—especially the overwhelming breadth of federal jurisdiction—one may get the sense that an Erie-like problem is inevitable. The American and Australian judiciaries share many qualities that are crucial ingredients of Erie: both systems feature parallel state and federal courts, both permit the federal judiciary to hear cases in diversity, and both are common law systems in which judges exercise some amount of judicial discretion, particularly on matters of procedure.

It has been suggested that the mere unification of common law across Australia nullifies any risk of the Erie problem, but this argument is unconvincing.⁴⁴ Considering the bare constitutional structure of the courts, absent legislative intervention, Australia finds itself in a position that very much resembles that of the United States. Under the High Court's current jurisprudence, state law cannot independently control the procedure of courts exercising federal jurisdiction, but state law does provide the substantive rule of decision in diversity cases.⁴⁵ Based on these conditions, one could imagine a situation in which the common law procedure conflicts with or substantially frustrates the operation of a state statute. In the absence of a federal law that

⁴³ See *id.* at 69 (“The ‘matter’ was read by the High Court to refer to the underlying ‘justiciable controversy, identifiable independently of the proceedings which are brought for its determination and encompassing all claims made within the scope of the controversy,’ whether federal- or State-based.” (citing *Fencott v Muller* (1983) 152 CLR 570, 603)).

⁴⁴ See, e.g., Owen Dixon, Sources of Legal Authority (1943 address to the American Bar Association Section for International & Comparative Law) in *JESTING PILATE & OTHER PAPERS & ADDRESSES* 198, 202 (Law Book Co. 1965).

⁴⁵ See *Rizeq v Western Australia* [2017] HCA 23, 9 (concluding that the substantive criminal statute applies of its own force).

expressly defers to state procedure, the question would become whether the state statute or federal practice prevails.

However, the High Court has not had to grapple with this possibility due to a legislative decision of Australia's first Parliament. Section 79 of the Judiciary Act of 1903 directs all courts exercising federal jurisdiction to apply "[t]he laws of each State or Territory, including the laws relating to procedure, evidence, and the competency of witnesses . . . except as otherwise provided by the Constitution or the laws of the Commonwealth"⁴⁶ Under this law, there can be no conflict between federal court procedure and state substantive law because federal law has, for nearly Australia's entire history, adopted state procedure. The long-term existence of this rule explains why the High Court has not yet encountered a situation like the one described in the paragraph above. I thus maintain that *Erie* is still constitutionally *possible* in Australia, though under the current statutory regime it is unlikely.

Section 80 of the Judiciary Act also contains a saving clause in case there is any doubt about which law to apply. It provides that,

So far as the laws of the Commonwealth are not applicable or so far as their provisions are insufficient to carry them into effect, or to provide adequate remedies or punishment, the common law in Australia as modified by the Constitution and by the statute law in force in the State or Territory in which the Court in which the jurisdiction is exercised is held shall, so far as it is applicable and not inconsistent with the Constitution and the laws of the Commonwealth, govern all Courts exercising federal jurisdiction in the exercise of their jurisdiction in civil and criminal matters.⁴⁷

The precise meaning of this provision is still debated, and the High Court has not taken an affirmative position on it.⁴⁸ However, the plain text of this section suggests that judge-made

⁴⁶ *Judiciary Act 1903* (Cth) s 79(1).

⁴⁷ *Id.* at s 80.

⁴⁸ *Rizeq*, [2017] HCA at 25 ("No question of the operation of s 80 arises in this appeal, no argument has been directed to s 80 by the parties and interveners, and it is neither necessary nor appropriate to refer further to s 80 in order to explain the operation of s 79 to the extent relevant to the determination of this appeal."); James Stellios,

procedure only applies when there is no other law to apply. The statutorily-created hierarchy of applicable procedural law in this section thus preempts the substance/procedural conflict by taking discretion over which law to apply out of the judge's hands entirely.

[The remainder of Part II omitted]

III. IS THE U.S. REALLY UNIQUE?

With Part II's analysis of other federal systems complete, I now turn to the question I posed at the beginning of this paper: Is the U.S. federal system unique? Analyzing the constitutional structures of each of the countries studied above, the answer to this question must be no. Each of Australia, Canada, and Germany has a strong federal system in which both the national and subnational governments share legislative and judicial power. Moreover, at least two of the other countries studied here (Australia and Germany) are constitutionally committed to separation of powers. But none of them has encountered the constitutional conflict the Erie doctrine purportedly resolves. So how does one explain the United States' status as an outlier?

The existence of diversity jurisdiction in U.S. federal courts provides a partial answer to this question. *Erie* itself was a case predicated on diversity jurisdiction, and most of the work the Erie doctrine does in our federal system is limited to diversity cases. On this front, only Australia shares our dilemma, having granted its federal courts the authority to adjudicate cases under all nine heads of federal jurisdiction. But the fact that Australia grants courts subject-matter jurisdiction over diversity cases and has also managed to avoid the Erie problem indicates that merely the existence of diversity jurisdiction in the U.S. is not a complete explanation.

Choice of Law in Federal Jurisdiction After Rizeq v. Western Australia, 46 AUSTL. BAR REV. 187 (2018) (“[T]he scope of s 80 of the Judiciary Act, and its relationship to s 79(1), were questions left open by the Court.”).

In pursuit of a more complete answer, this Part highlights three additional features of the American federal system that the countries studied in Part II approached differently. More precisely, the United States is the only country studied in this paper that relies on a distinction between substance and procedure to determine the rule of decision; it is the only country without a unified national court system; and it is the only country that remains unable to pinpoint the source of the federal judiciary’s procedural authority. Juxtaposing our various approaches will provide a basis for the suggestions laid out in Part IV about potential steps American lawmakers could take to fix the *Erie* problem.

A. *Substance/Procedure Dichotomy*

There would be no *Erie* problem without reliance on the distinction between substance and procedure to determine the applicable law. It is, after all, an intrinsic part of *Erie*’s fundamental holding. But the problem with the distinction between substance and procedure is that it is largely contrived, as the distinction it represents is not entirely natural or logical. For centuries, Anglo-American law operated without any need to distinguish between the two.⁴⁹ It was only during the latter half of the 18th century, when law and equity began to merge in English courts, that the distinction was first observed—a process that happened to coincide with the American declaration of independence from Great Britain.⁵⁰

⁴⁹ As Professor Thomas Main observed in a 2003 article, “For centuries prior to Blackstone the substance of the English common law had been buried in the cumbersome procedure of the law courts—and particularly in its pleading rules.” Thomas O. Main, *Traditional Equity and Contemporary Procedure*, 28 WASH. L. REV. 429, 454 (2003). In equity courts, by contrast, substance consumed form. *Id.* at 457. These two sides were initially brought together when Blackstone reconceptualized them as a unified legal system in which substantive rights were determined in particular modes of process. *See id.* at 459–60; *see also* Jay Tidmarsh, *Procedure, Substance, and Erie*, 64 VAND. L. REV. 875, 882 (2019) (“For centuries the Anglo-American tradition thoroughly integrated and interwove rules of ‘procedure’ . . . and rules of ‘substance’ . . .”).

⁵⁰ *See* Main, *supra* note 49, at 461–64 (describing the disaggregation of substance and procedure in American federal courts due to the constitutional merger of law and equity).

The early American Congresses codified this newfangled distinction through the Process Acts of 1789 and 1792, which, among other things, required federal courts to employ the procedure of the forum state for actions at common law.⁵¹ With this legislative enactment, a new era began in which the distinction became a crucial consideration in a court's conflict of laws analysis. Even as scholars have universally labeled the substance/procedure distinction "ad hoc" or—more derisively—"organized confusion," modern courts continue to rely on it.⁵² The Supreme Court, too, has recognized the difficulty of the substance/procedure distinction, noting in *Hanna v. Plumer* that "every procedural variation is 'outcome determinative' in one sense or another."⁵³ Although the framework established in *Hanna* brought us closer to an intelligible solution with respect to the Erie analysis itself, the substance/procedure distinction remains evasive in cases where it applies.

How does this experience compare with Australia, Canada, and Germany? As Part II indicates, we are not the only judicial system that has ratified the substance/procedure distinction. In Australia, for example, the High Court's decision in *Rizeq* established that, as a constitutional matter, state courts exercising federal jurisdiction are generally controlled by federal procedural law and state law aimed at primary conduct.⁵⁴ But the meaningful difference between Australia and the U.S. is that Australian courts do not, as a result, rely on the substance/procedure dichotomy to decide which law applies. Recall that in *Rizeq* the High Court ruled that the Australian Constitution permits only federal law to "regulate the exercise of federal jurisdiction"—a power that encompasses a laundry list of matters, only one of which is

⁵¹ See Process Act of 1789, ch. 21, § 2, 1 Stat. 93 (repealed 1792); Process Act of 1792, ch. 26, § 2, 1 Stat. 275 (repealed 1872).

⁵² D. Michael Risinger, "Substance" and "Procedure" Revisited with Some Afterthoughts on the Constitutional Problems of "Irrebuttable Presumptions," 30 UCLA L. REV. 189, 202 (1982).

⁵³ *Hanna v. Plumer*, 380 U.S. 460, 468 (1965).

⁵⁴ *Rizeq v Western Australia* [2017] HCA 23, 5–9.

procedure.⁵⁵ State law aimed at primary conduct, on the other hand, provides the applicable rule of decision.⁵⁶ Given the recency of the *Rizeq* decision, more precise rules about what constitutes the regulation of federal jurisdiction are likely forthcoming. However, the High Court emphatically rejected the substance/procedure dichotomy, favoring instead a broader view of the Commonwealth's authority to regulate its own court system.⁵⁷

Nor does section 79 of the Judiciary Act's deferral to state procedure incorporate the substance/procedure dichotomy. Although the statute does direct courts exercising federal jurisdiction to apply state procedural and evidentiary rules, it does so against the background that the same court will also be applying the state law governing primary conduct. Thus, even though courts are instructed on which law to apply in terms that resemble the substance/procedure dichotomy, in practice there is no need for the court to distinguish between the two. The Commonwealth Parliament has already legislatively determined that the applicable law in a diversity suit, whether procedural or substantive, is the law of the state.

Canadian courts have also taken note of the substance/procedure distinction in cases that implicate the legislative interests of the provincial and federal governments. However, the Supreme Court of Canada has held consistently that federal statute law applies in superior courts, regardless of its classification as substantive or procedural, so long as the federal law is a valid exercise of the federal Parliament's legislative power.⁵⁸ In the absence of a federal statute, provincial procedure receives secondary priority, and the unified national common law only applies as a last resort.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *See supra* [notes not present in this excerpt] and accompanying text.

In Germany, the federal legislature occupies almost the entire body of substantive and procedural law in all courts, whether national or subnational. There is thus no practical situation in which the laws of the *Länder* would conflict with federal law. Moreover, despite German judges' ability to create law in rather narrow circumstances, the country's civil law tradition discourages judicial discretion. It is therefore extremely unlikely that a court would ever take it upon itself to make the same discretionary choice of applicable law that common law courts do.

B. *Ununified Court System*

The United States also stands out from its peers in that it is the only nation with a parallel rather than unified judiciary. It is a long-established principle of American federalism that states maintain ultimate authority over their own laws, whether statutory or judge-made.⁵⁹ The very contention of the *Erie* Court was that dual sovereignty requires federal courts to defer to state authority in claims asserted under state law.⁶⁰ There are two consequences of this structure: First, with limited exception, state courts are the court of last resort on state law matters.⁶¹ Second, when federal courts exercise jurisdiction over state law claims, they must faithfully apply state law as interpreted by that state's courts (and in cases where the law has not been interpreted by state courts, the federal court must do its best to guess how a state court would rule).⁶²

As it turns out, this dimension of our federal system is quite unique. In Canada and Australia, the apex court has the final word on the statutes enacted by each level of government

⁵⁹ See, e.g., *McCulloch v. Maryland*, 17 U.S. 316, 350–51 (1819) (“Granting, that . . . the sovereignty of the state, within its territory, over this subject, is but equal to that of the United States; and that all sovereign power remains undiminished in the states, except in those cases in which it has, by the constitution, been expressly and exclusively transferred to the United States . . .”).

⁶⁰ 304 U.S. 64, 78–79 (1933) (“[T]he Constitution of the United States, which recognizes and preserves the autonomy and independence of the States -- independence in their legislative and independence in their judicial departments.”).

⁶¹ See *supra* [notes not present in this excerpt] and accompanying text.

⁶² *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (holding that the law to be applied in diversity is the law of the state whether “declared by its Legislature in a statute or by its highest court in a decision” (emphasis added)).

and pronounces a singular national common law. It has been noted that the Canadian Supreme Court refrains from exercising appellate review on most provincial law matters, but the authority still exists and is exercised when cases present an issue of national significance. In other words, even if the Canadian Supreme Court declines to interfere in run-of-the-mill issues, it still reserves the most important provincial law questions for itself. The practice of these two countries varies drastically from the United States, where federal courts may only substantively interpret state law if doing so is a necessary precondition of adjudicating an underlying federal right.⁶³

Formally, Germany mimics the United States in that the *Länder* possess ultimate interpretive authority over their own laws unless they delegate appellate authority to the federal supreme courts or where other statutory interventions apply. In practice, however, the scope of civil *Land* law is very small due to the existence of a comprehensive federal civil code. This allocation of legislative authority contrasts with American federalism, where states maintain residual lawmaking authority over any area that is not preempted by the much more limited lawmaking power of Congress.⁶⁴ Moreover, the procedure in *Land* courts is centrally controlled by a federal code of civil procedure.⁶⁵ As a practical matter, then, the German system is more aligned with Canada and Australia because the judiciaries of the *Länder* are similarly subject to federal control.

⁶³ See *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938) (“On such a question, one primarily of state law, we accord respectful consideration and great weight to the views of the state's highest court, but, in order that the constitutional mandate may not become a dead letter, we are bound to decide for ourselves whether a contract was made, what are its terms and conditions, and whether the State has, by later legislation, impaired its obligation.”).

⁶⁴ U.S. CONST. amend. X.

⁶⁵ Zivilprozessordnung [ZPO] [Code of Civil Procedure], https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html (link is to English translation).

C. *Unclear Status of Procedural Common Law*

Finally, comparing judicial federalism in the United States to the other countries discussed in this paper highlights how the unclear legal status of procedural common law in federal courts has contributed to the Erie problem. As things currently stand, the procedural common law of American federal courts simultaneously is and is not federal law depending on the context. Federal judges have long exercised authority to develop rules about internal court administration—an oversight role that many have argued belongs exclusively to the courts.⁶⁶ These rules have played a critical role in the day-to-day regulation of one of the three branches of the federal government and, in that sense, occupy the same role as federal law. At the same time, court-developed procedural rules are not binding on states like substantive federal common law is. Moreover, the Erie doctrine holds that judge-made procedure must give way to state law when *Hanna*'s twin-aims test is satisfied, thus indicating that judge-made procedure lacks the preemptive force of federal law.

Against this background, many theories about the source of procedural common law have developed. Some suggest that judges' power over judicial administration is inherent in Article III's Vesting Clause.⁶⁷ But if this were the case, the Supremacy Clause should permit judge-made procedure to preempt state law in the same way substantive federal common law does. Others have argued that the power to create procedure exists as a necessary stopgap for Congress's failure to pass comprehensive legislation on courtroom procedure.⁶⁸ This explanation is more fitting, though perhaps a little strained, because it explains why judge-made procedure would

⁶⁶ See Amy Coney Barrett, *Procedural Common Law*, 94 VA. L. REV. 813, 833–35 (2008) (exploring arguments about courts' inherent authority to regulate procedure and the corresponding limits on Congress's ability to do so). The Supreme Court has left the question of limits on Congress's ability to regulate court procedure open, although it has implied on several occasions that limits do exist. *Id.* at 834 n. 65.

⁶⁷ See *id.* at 846–47.

⁶⁸ See *id.* at 847–48.

yield when confronted with applicable law created by a sovereign lawmaking state. A range of explanations exist within these bounds, but the Supreme Court has so far declined to adopt any particular view on the question.⁶⁹

In Australia, Canada, and Germany, by contrast, judicial procedure—whether statutory or judge-made—is expressly tethered to the country’s constitutional and legislative structures. In Australia and Germany, procedural rules are controlled entirely by statute. Since Australia’s establishment as a federation, the 1903 Judiciary Act has required federal courts to follow state procedure. But insofar as state law is “not applicable or . . . insufficient for some reason,” the national common law (which federal courts are constitutionally empowered to create) applies as modified by state law.⁷⁰ This structure embeds a clear hierarchy of authority into Australian law: First, federal law controls the procedure in federal courts. Second, because federal law defers to state authority, state procedure becomes the *de facto* controlling law. Third, if neither federal nor state law applies, federal statute law tells courts to apply the common law. Each of these elements works in sync to eliminate any question about the applicable law. Structurally, it also mitigates any possibility of conflict between federal and state law because both are applied by the legal authority of the same sovereign.

In Germany, on the other hand, the federal Parliament’s comprehensive nationwide legislation on civil procedure has regulated both *Länder* and federal courts since 1877.⁷¹ Indeed, the Code of Civil Procedure (ZPO) prescribes the rules of civil actions, the five phases of a civil trial, the appeals process, and rules governing enforcement proceedings.⁷² It is true, as I

⁶⁹ See *id.* at 877 (“Thus, as matters stand, the historical record offers some support for the proposition that federal courts possess inherent procedural authority, but the support it offers is undeniably modest.”).

⁷⁰ *Judiciary Act 1903* (Cth) s 80.

⁷¹ NIGEL G. FOSTER, *GERMAN LEGAL SYSTEM & LAWS* 121 (2d ed. 1996).

⁷² *Id.* at 126.

explained in Part II.C, that judges possess some lawmaking authority on the margins, but there is no evidence that such authority would extend to procedural matters. Thus, Germany and Australia are similar, despite their different legal traditions, in that any procedural action their courts take necessarily possesses preemptive power because it is based on clear federal authority.

In Canada, authority over the superior court procedure is shared by the federal Parliament, the parliament of the court's respective province, and the courts themselves. As the Supreme Court has explained, federal statute law always prevails, whether substantive or procedural, provided the applicable legislation results from a valid exercise of its legislative authority. Provincial statute law has purview over all other matters, and the common law kicks in only when neither federal nor provincial law applies. Like Australia, the courts of Canada have inherent power to create common law, but the clear hierarchy above allocates such procedure only tertiary priority, following the exhaustion of both federal and provincial procedure.

Applicant Details

First Name **Cleo-Symone**
 Last Name **Scott**
 Citizenship Status **U. S. Citizen**
 Email Address cleo.scott@richmond.edu
 Address

Address

Street
1702 Wake Forest Drive
 City
Richmond
 State/Territory
Virginia
 Zip
23226
 Country
United States

Contact Phone Number **7572847494**

Applicant Education

BA/BS From **Virginia Commonwealth University**
 Date of BA/BS **May 2018**
 JD/LLB From **University of Richmond School of Law**
http://www.nalplawschoolsonline.org/content/OrganizationalSnapshots/OrgSnapshot_235.pdf
 Date of JD/LLB **May 11, 2024**
 Class Rank **50%**
 Law Review/Journal **Yes**
 Journal(s) **Richmond Journal of Law and Technology**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Martin, Saleen
sdmartin@usatoday.com
(757) 580-0065

Suddarth, Rachel
rsuddart@richmond.edu
8044670965

Norris, Luke
lnorris@richmond.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

1702 Wake Forest Drive
Richmond, VA 23226

May 9, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman
United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a second-year student at the University of Richmond School of Law, and I am writing to apply for a clerkship in your chambers beginning in August 2024. As a native of Franklin, Virginia, I would welcome the opportunity to return to the Hampton Roads area to clerk.

As a clerk in your chambers, I would employ the writing and research skills I have developed through my academic and professional experiences. Before law school, I learned the art of writing succinctly while earning a graduate degree in international journalism. I sharpened those skills as a reporter for local newspapers and as a public school's communications coordinator. Since arriving at Richmond Law, my writing and research skills have been honed through a research position with Professor Luke Norris, for whom I have investigated labor and employment law topics, and my journal experience. For the 2023-24 school year, I will serve as the Technical Editor of the *Richmond Journal of Law and Technology*, the nation's oldest student-edited journal published exclusively online. Further, as an extern to Dominion Energy, Inc. and a summer associate at Gentry Locke, I drafted a variety of documents, including legal memoranda, interrogatories and company protocols. These positions also expanded my familiarity with new areas of the law through my research on energy, real estate, and medical malpractice topics. Of the work-related activities in which I have participated, observing court proceedings has been one of the most fascinating to me.

Included are my resume, writing sample, and transcripts for your review. Thank you for your time and consideration. I would appreciate the opportunity to interview with you.

Sincerely,



Cleo-Symone Scott

CLEO-SYMONNE SCOTT

1702 Wake Forest Drive • Richmond, VA 23226 • cleo.scott@richmond.edu • (757) 284-7494

EDUCATION

University of Richmond School of Law

Richmond, VA

Candidate for Juris Doctor

May 2024

- Associate Technical Editor, *Richmond Journal of Law and Technology*
 - [Digital License Plates Are Available in Some States, But People Have Concerns.](#)
 - [ChatGPT Co-Wrote an Episode of South Park. Will The AI Chatbot Replace the Need for Writers in Hollywood?](#)
- Board Member, Richmond Law & Business Forum
- Richmond Women's Law; Black Law Students Association; Sports & Entertainment Law Society
- Student Attorney, Intellectual Property and Transactional Law Clinic (*Upcoming Fall 2023*)

City, University of London

London, UK

Master of Arts, with Merit, in International Journalism

September 2019

- Concentration: Broadcast Journalism and Popular Culture
- Documentary Final Project: Climate Change Impacting Tangier Island

Virginia Commonwealth University

Richmond, VA

Bachelor of Arts, cum laude, in Political Science

May 2018

- Concentration: International Relations; Minor: Homeland Security and Emergency Preparedness
- Tau Sigma National Honor Society, Golden Key International Honour Society

EXPERIENCE

Dominion Energy, Inc.

Richmond, VA

Legal Extern

January 2023 – Present

- Conduct research, draft legal memoranda, and review contracts to assist in-house counsel on legal matters; observe team and client meetings
- Received an Honors Pass for demonstrating excellence in the externship

Richmond Journal of Law and Technology

Richmond, VA

Associate Technical Editor

January 2023 – Present

- Collaborate with the technical editor on website updates, publication, and technical management of the Journal.
- Write blog posts related to law and technology
- Edit and cite check staff members' blog posts

Staff Member

August 2022 – December 2022

- Revised footnotes in the articles scheduled for publication.

Gentry Locke Attorneys

Roanoke, VA

Summer Associate

Summer 2022, *Upcoming Summer 2023*

- Conducted research, drafted legal memoranda, wrote interrogatories, updated and revised company protocols, and performed document review; observed client meetings, court proceedings, depositions, and mediations

University of Richmond School of Law

Remote

Research Assistant for Professor Luke Norris

May 2022 – June 2022

- Researched and drafted legal memoranda on employment law topics

Franklin City Public Schools

Franklin, VA

Communications & Social Media Coordinator

August 2020 – June 2021

- Coordinated communications efforts by writing and distributing press releases, taking pictures and videos of school activities, editing videos, designing flyers, and interacting with the media and other businesses
- Organized advertising campaigns and managed the division's social media accounts and websites

The Virginian-Pilot, Daily Press, & Virginia Gazette

Norfolk, VA

Breaking News, City Government, & General Assignments Intern

October 2019 – April 2020

- Reported and wrote daily news and enterprise stories for Tribune Publishing's online and print editions
- Covered schools, government, and general assignments for York County, VA
- Responded to crime and breaking news during night shift and wrote news briefs updating the community

UNIVERSITY OF RICHMOND

Student No: ***-**-9683

UR ID: 39883895

Date Issued: 06-JUN-2023

AEEE

Record of: Cleo-Symone Scott

Page: 1

Issued To: Cleo-Symone Scott

Parchment DocumentID: TWB27731

Course Level: Law

Only Admit: Fall 2021

Current Curriculum

Juris Doctor

College : School of Law

Major : Law

SUBJ NO.

COURSE TITLE

CRED GRD

PTS R

Institution Information continued:

LAWR 598 TRIAL ADVOCACY 2.00 P 0.00

Ehrs: 17.00 GPA-Hrs: 13.00 QPts: 39.00 GPA: 3.00

SUBJ NO. COURSE TITLE CRED GRD PTS R

INSTITUTION CREDIT:

Spring 2023

LAWE 653 INTRODUCTION TO BUSINESS 2.00 P 0.00

LAWE 667 HUMAN RIGHTS SEMINAR 3.00 B+ 9.90

LAWE 700 ENTERTAINMENT LAW 2.00 B+ 6.60

LAWE 746 EXTERNSHIP: IN-HOUSE 5.00 H 0.00

LAWE 768 TRADEMARK LAW 3.00 B+ 9.90

LAWR 605 PROFESSIONAL RESPONSIBILITY 2.00 B+ 6.60

Ehrs: 17.00 GPA-Hrs: 10.00 QPts: 33.00 GPA: 3.30

Fall 2021

Due to faculty error, students in certain Fall 2021 Torts classes had to be graded on a pass/fail basis.

LAWR 513 CONTRACTS 4.00 B+ 13.20

LAWR 514 TORTS 4.00 P 0.00

LAWR 515 CIVIL PROCEDURE 4.00 B 12.00

LAWR 517 LEGAL ANALYSIS & WRITING I 2.00 A- 7.40

LAWR 520 LEGAL RESEARCH I 0.00 S 0.00

LAWR 522 PROF. IDENTITY FORMATION I 0.00 S 0.00

Ehrs: 14.00 GPA-Hrs: 10.00 QPts: 32.60 GPA: 3.26

Fall 2023

IN PROGRESS WORK

LAWE 606 WILLS AND TRUSTS 4.00 IN PROGRESS

LAWE 699 READING GROUP: MERMAIDS & MARI 1.00 IN PROGRESS

LAWE 758 IMMIGRATION LAW 2.00 IN PROGRESS

LAWE 790 INTELL PROP & TRANSACTN CLINIC 6.00 IN PROGRESS

In Progress Credits 13.00

Spring 2022

LAWR 503 CONSTITUTIONAL LAW 4.00 B+ 13.20

LAWR 506 CRIMINAL LAW 3.00 A- 11.10

LAWR 516 PROPERTY 2.00 B 6.00

LAWR 518 LEGAL ANALYSIS & WRITING II 2.00 A- 7.40

LAWR 519 LEGISLATION AND REGULATION 3.00 B+ 9.90

LAWR 521 LEGAL RESEARCH II 1.00 A- 3.70

LAWR 523 PROF. IDENTITY FORMATION II 1.00 P 0.00

Ehrs: 16.00 GPA-Hrs: 15.00 QPts: 51.30 GPA: 3.42

Spring 2024

IN PROGRESS WORK

LAWE 615 SELECTD TOPICS IN VIRGINIA LAW 3.00 IN PROGRESS

LAWE 619 CORE COMMERCIAL LAW CONCPTS 2.00 IN PROGRESS

LAWE 628 EMPLOYMENT DISCRIMINATION LAW 2.00 IN PROGRESS

LAWE 661 WRITING FOR CLERKS 2.00 IN PROGRESS

LAWE 699 VA LEGAL RESEARCH 1.00 IN PROGRESS

LAWE 699 LABOR & EMPLOYMENT LAW 3.00 IN PROGRESS

LAWE 707 FAMILY LAW 3.00 IN PROGRESS

In Progress Credits 16.00

Fall 2022

LAWE 599 EVIDENCE 4.00 B 12.00

LAWE 613 ANTITRUST 3.00 B 9.00

LAWE 641 INTELLECTUAL PROPERTY FUNDMNL 3.00 B 9.00

LAWE 643 INTERNATIONAL LAW 3.00 B 9.00

LAWE 699 CYBER CRIME 2.00 P 0.00

***** CONTINUED ON NEXT COLUMN *****

***** CONTINUED ON PAGE 2 *****

K a Ball

Kristen A. Ball, University Registrar

UNIVERSITY OF RICHMOND

Student No: ***-**-9683

UR ID: 39883895

Date Issued: 06-JUN-2023

AEFF

Record of: Cleo-Symone Scott
Level: Law

Page: 2

***** TRANSCRIPT TOTALS *****

| | Earned Hrs | GPA Hrs | Points | GPA |
|-------------------|------------|---------|--------|------|
| TOTAL INSTITUTION | 64.00 | 48.00 | 155.90 | 3.24 |

| | | | | |
|----------------|------|------|------|------|
| TOTAL TRANSFER | 0.00 | 0.00 | 0.00 | 0.00 |
|----------------|------|------|------|------|

| | | | | |
|---------|-------|-------|--------|------|
| OVERALL | 64.00 | 48.00 | 155.90 | 3.24 |
|---------|-------|-------|--------|------|

***** END OF TRANSCRIPT *****



K A Ball

Kristen A. Ball, University Registrar

**OFFICE OF THE UNIVERSITY REGISTRAR
UNIVERSITY OF RICHMOND, VIRGINIA 23173
(804) 289-8639**

email: registrar@richmond.edu / website: www.registrar.richmond.edu

COURSE CREDIT

As of Fall 2008, the undergraduate divisions of the School of Arts and Sciences, the Robins School of Business, and the Jepson School of Leadership Studies converted from semester hours to units. A 1-unit course is equivalent to 3.5 semester hours. For all other schools (and the above schools prior to Fall 2008), course credit is awarded on the semester hour system. Credit is determined by a variety of factors, including contact time with a faculty member in a formal setting and expectations of independent study work through a nominal 15-week semester.

GRADING SYSTEM: since 1966

| | | |
|----|-----|--|
| A+ | 4.0 | |
| A | 4.0 | Excellent range |
| A- | 3.7 | |
| B+ | 3.3 | |
| B | 3.0 | Good range |
| B- | 2.7 | |
| C+ | 2.3 | |
| C | 2.0 | Average range |
| C- | 1.7 | |
| D+ | 1.3 | |
| D | 1.0 | Poor range |
| D- | 0.7 | |
| F | 0.0 | Failure |
| I | 0.0 | Punitive Incomplete (make-up grade may appear to right of "I") |
| M | 0.0 | Withdrew Failing |
| V | 0.0 | Failure, excessive absence |
| H | --- | Honors |
| P | --- | Pass |
| S | --- | Satisfactory, non-academic credit |
| U | --- | Unsatisfactory, non-academic credit |
| W | --- | Withdrew Passing |
| X | --- | Grade unavailable |
| Y | --- | Non-punitive Incomplete (make-up grade may appear to right of "Y") |
| Z | --- | Audit |
| TR | --- | Transfer |

- Effective Fall 2008 and between Spring 1989 and Summer 1992, an approved undergraduate course taken for graduate credit is designated by a course number below the 500 level followed by a G.
- Prior to 1966 the 3.0 system was used, A=3 etc.
- Prior to Fall 1986, "0" designated failure for excessive absence, and except for Law, "+/-" did not affect the GPA. Prior to Fall 2002, "+/-" did not affect the GPA of Graduate Business students.
- Effective Summer 1992, graduate courses are transcribed separately from undergraduate courses.
- Prior to Summer 1992, courses numbered above the 400 level are graduate level unless otherwise indicated.
- Prior to Spring 1989, an approved undergraduate course taken for graduate credit is designated by a 400-level course number.

SCHOOL OF LAW

- Effective Fall 2014, faculty policy provides for assignment of a mean grade of 3.3 in all classes.
- Prior to Fall 2014, faculty policy provides for assignment of median grades of B in all first-year classes.
- Prior to Fall 2001, faculty policy provides for assignment of median grades of B+ in all first-year classes.
- Prior to Spring 1992, faculty policy provides for assignment of median and mode grades of C+ in all required classes.
- The law degree was the Bachelor of Laws (LLB) through 1969, Juris Doctor (JD) thereafter. LLB recipients have been given the option to exchange the LLB designation for the JD.
- Effective 2016: 87 hours required for graduation.
- 1993 - 2015: 86 hours required for graduation.
- 1973 - 1992: 90 hours required for graduation.
- 1942 - 1945: 80 hours required for graduation.
- 1975 - Pres: Grading scale outlined above except A+ and D+ are not awarded.
- 1972 - 1975: D = 55 - 61, F = Below 55.
- 1938 - 1972: A = 80 - 100%, B = 70 - 79, C = 62 - 69, D = 60 - 61, E = 50 - 59, F = Below 50, with 84 hours required for graduation.

COLLEGE/SCHOOL NAMES

Prior to 1992, undergraduate liberal arts students were enrolled in and graduated from Richmond College or Westhampton College. Since Fall 1992, undergraduate students are enrolled in the School of Arts and Sciences, The E. Claiborne Robins School of Business, and the Jepson School of Leadership Studies. Richmond College and Westhampton College now serve as the undergraduate colleges.

Effective Fall 1994, the name of the University College changed to the School of Continuing Studies. Effective Fall 2012, the name of the School of Continuing Studies changed to the School of Professional and Continuing Studies.

Effective Fall 2022, the name of the T.C. Williams School of Law changed to the School of Law.

ACCREDITATION

The University of Richmond is accredited by the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) to award baccalaureate, masters, and juris doctor degrees. Questions about the accreditation of the University of Richmond may be directed in writing to the Southern Association of Colleges and Schools Commission on Colleges at 1866 Southern Lane, Decatur, GA 30033-4097, by calling (404) 679-4500, or by using information available on SACSCOC's website (www.sacscoc.org). The University also is approved by the Virginia State Board of Education to offer teacher licensure programs. Various departments and divisions have more specialized accreditation. Included in this category are the chemistry program, accredited by the American Chemical Society; and the undergraduate teacher preparation programs and graduate certificate in teacher licensure program, accredited by the Teacher Education Accreditation Council. In addition, the Robins School of Business is accredited by the Association to Advance Collegiate Schools of Business International (AACSB) at the undergraduate and graduate levels, and the School of Law is fully accredited by the recognized standardizing agencies in the United States, on the approved lists of the American Bar Association, and a member of the Association of American Law Schools.

REPEATED COURSES

Repeated courses are noted to the right of the quality points earned for that course as follows:

- I = earned hours included; calculated in GPA
- A = earned hours excluded; calculated in GPA
- E = earned hours excluded; not calculated in GPA

Consult the appropriate catalog for information on course repeat policies.

TRANSCRIPT VALIDATION

An official transcript is printed on secure paper with a blue background. When photocopied, the word COPY will appear. Further authentication may be obtained by calling the Office of the University Registrar.

GRADE POINT AVERAGE CALCULATION

The grade point average is calculated by dividing the total number of grade points earned by the total number of GPA hours. The grade point average is represented to two significant decimal points and truncated, not rounded. Transfer work does not calculate in the grade point average.

CONTINUING EDUCATION UNITS (CEUs)

The continuing education unit is used to recognize participation in non-credit classes, courses, and programs. The University of Richmond assigns CEU credit based on the SACSCOC's *C.E.U.: Guidelines and Criteria*. Such non-credit courses are designated as "CE" level and have an "M" or "N" attached to the course number. They are graded as satisfactory/unsatisfactory and cannot be used to satisfy any requirements in any degree program.

RELEASE OF INFORMATION

This transcript cannot be released to any third party without the written consent of the student in accordance with the Family Educational Rights and Privacy Act of 1974 (the Buckley Amendment). The message "Issued to Student" will be noted on the transcript when the transcript is provided directly to the student.

Virginia Commonwealth Univ
Richmond, VA 23284

Student No:V00725532

Date of Birth: 12-JUN

Date Issued:25-OCT-2021 OFFICIAL

Record of : Cleo-Symone Scott

Issued To : CLEO-SYMON SCOTT

Course Level : Undergraduate

Student Type: Continuing

Program of Study

Degree : Bachelor of Arts
Program : Political Sci:Int Reltns-BA
College : Humanities and Sciences

Major: Political Science
Maj/Concentration: International Relations

Minor: HomeInd Sec & Emerg Prepared

Degree Information:

Degree Awarded Bachelor of Arts 19-MAY-2018

Primary Degree

Program : Political Sci:Int Reltns-BA
College : Humanities and Sciences

Major: Political Science
Maj/Concentration: International Relations

Minor: HomeInd Sec & Emerg Prepared

Dept. Honors: Honors in Political Science

Inst. Honors: Cum Laude

Subj No. Title Cred Grade Pts R

TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|------|-------|
| 6.00 | 0.00 | 0.00 | 0.000 |

201610 George Mason University

UNIV 112 FOCUSED INQUIRY II WI 4.00 TR

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|------|-------|
| 4.00 | 0.00 | 0.00 | 0.000 |

201620 George Mason University

FREN 101 ELEMENTARY FRENCH 3.00 TR

FREN 102 ELEMENTARY FRENCH 3.00 TR

INTL 101 HUMAN SOCIETIES & 3.00 TR

GLOBALIZATN

POLI 105 INTERNATIONAL RELATIONS 3.00 TR

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|------|-------|
| 12.00 | 0.00 | 0.00 | 0.000 |

Subj No. Title Cred Grade Pts R

INSTITUTION CREDIT:

Fall 2016

Humanities and Sciences
International Studies
Transfer

| Subj | No. | Title | Cred | Grade | Pts | R |
|------|-----|------------------------------|------|-------|-------|---|
| ANTH | 200 | INTRO TO AFRICAN SOCIETIES | 3.00 | A | 12.00 | |
| FREN | 201 | INTERMEDIATE FRENCH | 3.00 | C | 6.00 | |
| HUMS | 202 | CHOICES IN CONSUMER SOCIETY | 1.00 | P | 0.00 | |
| SOCY | 101 | INTRODUCTION TO SOCIOLOGY | 3.00 | A | 12.00 | |
| WRLD | 203 | CTXT/CNTXT:DANTE | 3.00 | A | 12.00 | |
| WRLD | 210 | INTERNATIONAL SOCIAL JUSTICE | 3.00 | A | 12.00 | |

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|-------|-------|
| 16.00 | 15.00 | 54.00 | 3.600 |

Dean's List
Good Standing

Spring 2017

Humanities and Sciences
Political Science
Continuing

| Subj | No. | Title | Cred | Grade | Pts | R |
|------|-----|-------------------------------|------|-------|-------|---|
| ARTH | 271 | HISTORY OF MOTION PICTURE II | 3.00 | C | 6.00 | |
| FREN | 202 | INTERMEDIATE FRENCH READINGS | 3.00 | B | 9.00 | |
| HSEP | 101 | HOMELAND SEC & EMERGENCY PREP | 3.00 | A | 12.00 | |
| HSEP | 301 | TERRORISM | 3.00 | B | 9.00 | |
| POLI | 109 | COMPARATIVE POLITICS | 3.00 | C | 6.00 | |
| POLI | 382 | INTERNATIONAL HEALTH | 3.00 | B | 9.00 | |

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|-------|-------|
| 18.00 | 18.00 | 51.00 | 2.833 |

Good Standing

Summer 2017

Humanities and Sciences
Political Science
Continuing

| Subj | No. | Title | Cred | Grade | Pts | R |
|------|-----|--------------------------------|------|-------|-------|---|
| HSEP | 302 | EMERGENCY PLAN & INCIDENT MGMT | 3.00 | A | 12.00 | |
| POLI | 341 | HIST POLI THRY:CLASS TO MOD WI | 3.00 | A | 12.00 | |

Subj No. Title Cred Grade Pts R

TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:

201410 VA Community College System

| Subj | No. | Title | Cred | Grade | Pts | R |
|------|-----|--------------------------------|------|-------|-----|---|
| BIOL | 151 | INTRO TO BIOLOGICAL SCI I | 3.00 | TR | | |
| BIOL | 152 | INTRO TO BIOLOGICAL SCI II | 3.00 | TR | | |
| BIOZ | 151 | INTRO TO BIOLOGICAL SCI I LAB | 1.00 | TR | | |
| BIOZ | 152 | INTRO TO BIOLOGICAL SCI II LAB | 1.00 | TR | | |
| HIST | 103 | SURVEY OF AMERICAN HISTORY | 3.00 | TR | | |
| HIST | 104 | SURVEY OF AMERICAN HISTORY | 3.00 | TR | | |

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|------|-------|
| 14.00 | 0.00 | 0.00 | 0.000 |

201420 VA Community College System

| Subj | No. | Title | Cred | Grade | Pts | R |
|------|-----|---------------------------|------|-------|-----|---|
| MATH | 141 | ALGEBRA WITH APPLICATIONS | 3.00 | TR | | |
| MATH | 151 | PRECALCULUS MATH | 3.00 | TR | | |

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|------|-------|
| 6.00 | 0.00 | 0.00 | 0.000 |

201510 VA Community College System

| Subj | No. | Title | Cred | Grade | Pts | R |
|------|-----|--------------------------------|------|-------|-----|---|
| UNIV | 111 | FOCUSED INQUIRY I | 3.00 | TR | | |
| UNIV | 200 | WRITING & RHETORIC WORKSHOP II | 3.00 | TR | | |

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|------|-------|
| 6.00 | 0.00 | 0.00 | 0.000 |

201520 VA Community College System

| Subj | No. | Title | Cred | Grade | Pts | R |
|------|-----|-----------------------|------|-------|-----|---|
| POLI | 103 | U.S. GOVERNMENT | 3.00 | TR | | |
| POLI | 1XX | PLS 212-GOVERNMENT II | 3.00 | TR | | |

EXTL

Page 1 of 2

Bernard C. Hamm
Bernard C. Hamm
University Registrar

Cleo-Symone Scott

6985

Virginia Commonwealth Univ
Richmond, VA 23284

Student No: V00725532

Date of Birth: 12-JUN

Date Issued: 25-OCT-2021 OFFICIAL

| Subj | No. | Title | Cred | Grade | Pts | R |
|------|-----|-------|------|-------|-----|---|
|------|-----|-------|------|-------|-----|---|

INSTITUTION CREDIT:

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|-------|-------|
| 6.00 | 6.00 | 24.00 | 4.000 |

Good Standing

Fall 2017

Humanities and Sciences

Political Science

Continuing

| | | | | | |
|------|-----|---------------------------------|------|---|-------|
| AFAM | 356 | AFRICAN GOVERNMENT & POLITICS | 3.00 | B | 9.00 |
| HSEP | 330 | LEGAL & CONSTITUTIONAL ISSUES | 3.00 | A | 12.00 |
| INTL | 351 | GOVERNMENT/POLITIC MIDDLE EAST | 3.00 | A | 12.00 |
| POLI | 107 | INTRO POLITICAL THEORY | 3.00 | B | 9.00 |
| POLI | 391 | TOP: SECRECY, SURVEILNC & SPIES | 3.00 | B | 9.00 |
| POLI | 490 | SENIOR SEMINAR WI | 3.00 | A | 12.00 |

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|-------|-------|
| 18.00 | 18.00 | 63.00 | 3.500 |

Dean's List

Good Standing

Spring 2018

Humanities and Sciences

Political Science

Continuing

| | | | | | |
|------|-----|----------------------------------|------|---|-------|
| AFAM | 318 | POLITICS OF RACE, CLASS & GEND | 3.00 | A | 12.00 |
| HSEP | 311 | STRATEGIC PLAN HOMELAND SEC | 3.00 | A | 12.00 |
| HSEP | 320 | INTELLIGENCE COMMUNITY & PROCESS | 3.00 | B | 9.00 |
| POLI | 359 | POLITICS OF DEVELOPING AREAS | 3.00 | A | 12.00 |
| POLI | 365 | INTER POLITICAL ECON WI | 3.00 | A | 12.00 |
| POLI | 380 | HUMAN SECURITY | 3.00 | A | 12.00 |

| Earned Hrs | GPA-Hrs | QPts | GPA |
|------------|---------|-------|-------|
| 18.00 | 18.00 | 69.00 | 3.833 |

Dean's List

Good Standing

Last Standing: Good Standing

| Transcript Totals | Earned Hrs | GPA Hrs | Points | GPA |
|-----------------------------|------------|---------|--------|-------|
| TOTAL INSTITUTION | 76.00 | 75.00 | 261.00 | 3.480 |
| TOTAL TRANSFER | 48.00 | 0.00 | 0.00 | 0.000 |
| OVERALL | 124.00 | 75.00 | 261.00 | 3.480 |
| -----END OF TRANSCRIPT----- | | | | |



Final Transcript

Name of Student Cleo-Symone Scott
Date of Birth 12 June 1997
Qualification Obtained Master of Arts
Awarding Institution City, University of London
Teaching Institution City, University of London
Professional Body Accreditation
Statutory Regulatory Body Recognition/Approval
Programme of Study

University Student No. 180019780/1
HESA Reference No. 1811150039944
Level of Qualification M
Language of Instruction English
Language of Assessment English
 Where applicable details are provided on a separate sheet
 Where applicable details are provided on a separate sheet
MA International Journalism

Record of Learning and Achievement

| 2018/9 | International Journalism | Mark | Credits | ECTS Credits | Level |
|--------------|----------------------------|------|------------|--------------|-------|
| JOM275 | Journalism Ethics | 66.4 | 30 | 15 | 7 |
| JOM276 | Broadcast Journalism | 60.7 | 15 | 7.5 | 7 |
| JOM289 | Popular Culture Specialism | 67.8 | 15 | 7.5 | 7 |
| JOM293 | Global Journalism | 70.6 | 15 | 7.5 | 7 |
| JOM301 | Journalistic Storytelling | 68.3 | 30 | 15 | 7 |
| JOM322 | Final Project | 70.0 | 30 | 15 | 7 |
| JOM923 | International News | 73.0 | 15 | 7.5 | 7 |
| JOM924 | Production | 63.0 | 30 | 15 | 7 |
| Total | | | 180 | 90 | |

Overall Credits Achieved 180
Overall ECTS Credits 90
Overall Classification with Merit

Overall Mark 67.29
Date of Award 31 October 2019

Study Abroad
Work Placement
Work Experience

Where applicable details are provided on a separate sheet
 Where applicable details are provided on a separate sheet
 Where applicable details are provided on a separate sheet

Signature

Name

Professor Sir Paul Curran

Position

President

Date

24 July 2020

Official Stamp



For further information on this document, see the reverse.

City, University of London, Northampton Square, London EC1V 0HB. Telephone: +44 (0)20 7040 5060

City, University of London Explanatory Notes

City, University of London is empowered by Royal Charter to confer degrees at bachelor, master and doctoral level, and other awards. All such awards are described by the UK National Qualifications Framework and the academic equivalent of similar awards granted by other UK institutions. City University London joined the University of London federation on 1st September 2016 to become one of its member colleges. Degrees awarded by City University London prior to this date and degrees awarded by City, University of London after this date are equivalent.

This transcript supports the certificate awarded to the individual named overleaf. For information on classifications of awards, see further down this page.

An explanation of some of the fields and terms used on the transcript may be helpful.

University Student No: Unique reference used by City, University of London for records held on the individual issued with this document. Please quote this number and the individual's name when making any enquiries to City, University of London.

HESA Reference No: Unique reference used by the Higher Education Statistics Agency (HESA) for records held on the individual issued with this document.

Qualification Obtained: Name of qualification awarded.

Level of Qualification: Level of qualification awarded.

Programme of Study: Title of programme of study as it appears on the award certificate.

Professional Body Accreditation: Notes when a programme of study is accredited by a representative professional body, or allows the individual named on the transcript to become a member thereof.

Statutory Regulatory Body Recognition/Approval: Notes any right to practise in a regulated profession.

Record of Learning and Achievement:

Details of modules taken by the individual issued with this document as components of programme of study leading to award of the qualification described overleaf.

Information on each line is as follows, from left.

Module code: Unique code assigned by City, University of London to each module for administration purposes.

Module title: The City, University of London approved module title.

Mark: Mark awarded.

Other Learning: Including details of other learning, with or without credit, undertaken by the individual issued with this document as part of the programme of study detailed overleaf.

Work Experience/Placement: Work undertaken to gain practical skills appropriate to the programme of study, noting whether such placements are an integral part of the programme and whether credit-bearing.

Study Abroad: Study undertaken outside the UK as part of the approved programme of study.

Prior/Experiential Learning: Credit awarded for uncertificated work experience or other learning.

Degree Classification: Where appropriate, classification of award for bachelor degrees classifications are made as follows, according to overall marks obtained. There are several classifications described in the University Assessment Regulations, listed as follows in descending order of achievement:

Class I (1) (First)

Class II Upper Division (2:1)

Class II Lower Division (2:2)

Class III (3) (Third)

Ordinary degree (Awarded on non-honours programmes, or where a graduate has failed one or more components but has gained sufficient credits to merit the award of a degree).

May 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Saleen D. Martin
Universal NOW Reporter, USA TODAY
7950 Jones Branch Drive
McLean, VA 22102

I met Cleo-Symone Scott in October 2019 when she came to The Virginian-Pilot as a reporter intern. As Cleo's mentor, I was wowed with her enthusiasm for the industry, growing as a reporter, and her adaptability and personality.

During Cleo's time at the Pilot, I was a staff writer on the Virginian-Pilot's breaking news team — DART Squad (Digital Action in Real Time). Cleo spent a few months on our team, going to crime scenes, being the sole reporter at night, and reporting to our night editor.

One of her biggest strengths is her desire to grow and her ability to recognize people she can learn from in the newsroom. She was always asking me for feedback on questions she asks, how she words emails and corresponds with sources, and the sources she chooses to interview.

She's not afraid to ask anything, and I think that's a great quality to have.

Additionally, I had the pleasure of working on a story with her about a local church that found three crypts and a tunnel underneath it. Cleo was thrilled to work on the story. She took the lead on the historical background portion of the story and spoke to a local historian about what the findings could mean for the Hampton Roads area. Cleo's work really helped to flesh out the story, to make it interesting, and most importantly, to make it a more educational read.

Cleo showed us that she can adjust and adapt well to constantly changing situations, which is a much-needed quality in any industry. There were a lot of busy nights where she was required to cover breaking news for Southside Hampton Roads and the peninsula. She was able to handle it all and do it well.

Cleo and I have kept in touch throughout the years, and I believe many of the skills she learned at the Pilot will also benefit her in the legal profession. Specifically, I believe her communication and research skills will greatly benefit your chambers. I am so glad to have met her, and I know she's going to excel wherever she goes.

If you need additional information, feel free to email me at sdmartin@usatoday.com or call me at (757) 580-0065.

Best,
Saleen D. Martin

Saleen Martin - sdmartin@usatoday.com - (757) 580-0065



April 6, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman
United States Courthouse
600 Granby Street
Norfolk, VA 23510

Re: Recommendation for Cleo Scott

Dear Judge Walker:

I am writing to offer my full support for Cleo Scott's application to serve as a law clerk in your chambers. I was fortunate to have Cleo during her first year of law school in my full-year Legal Analysis and Writing course. Cleo was an extremely strong student, showing a consistent desire to master legal research and writing. She was also a delight to interact with both inside and outside of class.

Cleo is a strong, mature student and a very good legal writer. Her years of work experience showed during class discussions, where she offered excellent analysis and commentary. She earned an A- each semester of my legal writing course and I have no doubt that she will do a wonderful job in a clerkship position.

Cleo and I have spoken regarding her desire to serve as a law clerk. After spending last summer in a litigation firm, she is very excited about the opportunity to learn more about the judicial process and gain exposure to a wide array of legal topics. She knows that clerking is a once in a lifetime opportunity to both learn from, and give back to, the judiciary. I am confident that you would enjoy having her in chambers just as much as she would enjoy serving you.

Please do not hesitate to contact me with any questions at (804) 289-8466 or by email at rsuddart@richmond.edu.

Sincerely,

A handwritten signature in blue ink that reads "Rachel J. Suddarth".

Rachel J. Suddarth
Professor of Law, Legal Practice

Faculty
203 Richmond Way
University of Richmond, VA 23173
law.richmond.edu



April 5, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Va 23510

Re: Judicial Clerkship Applicant – Cleo Scott

Dear Judge Walker:

I am delighted to write a letter of recommendation for Cleo Scott. Cleo was my student in Civil Procedure and served as a research assistant this past summer for a treatise on labor and employment law. I have grown to know Cleo well, and I think she is shaping up to be a very promising lawyer and would be a very good clerk!

Cleo was a joy to teach in Civil Procedure. She is well-prepared, kind, thinks ably on her feet, and seems to genuinely enjoy engaging with the subject material. During cold calls, I was also impressed with Cleo's clear communication skills and her ability to synthesize and present complex legal materials. Cleo is an easygoing student who gets along well with others and does not boast her considerable legal acumen. It was clear from class that Cleo has the intellectual and social skills to go far as a lawyer.

Cleo was also a first-rate research assistant. This past summer, I was completing a treatise, VIRGINIA LABOR & EMPLOYMENT LAW, and I asked Cleo to do a deep dive into the Fair Credit Reporting Act and its impact on the employment relationship. Well before I expected her to, Cleo presented me with her memorandum. I expected it to be incomplete based on how quickly it came, but I was so pleasantly surprised. Cleo wrote a clear, detailed, and incredibly helpful memo. I was incredibly impressed by her professionalism, ability to work quickly, and ability to write clearly while being thorough. Needless to say, Cleo's memo greatly improved the final product of the treatise! What's more, Cleo performed this work while she was a summer associate at Gentry Locke performing important work for them on a full-time basis.

Cleo's experiences before and during law school also position her well to excel as a clerk. Before law school, Cleo worked in communications in media (with a Virginia newspaper) and schools, learning critical skills about writing, understanding audience, and synthesizing information. Her professional experiences show in her ability to write and communicate. During law school, Cleo has worked on a journal, with the Law & Business Forum (where she is a board member), and with Richmond Women's Law, among other activities. On top of all of this, she is currently working at Dominion Energy as a legal extern, gaining broad experience working with their in-house counsel.

Faculty
203 Richmond Way
University of Richmond, VA 23173
law.richmond.edu

April 5, 2023
Page 2

In sum, I think Cleo has the professional skills, legal learning, and communication skills to be a very good clerk. I very much hope you give her a chance! And please do not hesitate to reach out via email (lnorris@richmond.edu) or phone (814-558-6764) if you would like to speak further.

Sincerely,

A handwritten signature in dark ink, appearing to read "Luke P. Norris". The signature is fluid and cursive, with the first name "Luke" being more prominent.

Luke P. Norris
Associate Professor of Law

Faculty
203 Richmond Way
University of Richmond, VA 23173
law.richmond.edu

CLEO-SYMONE SCOTT

1702 Wake Forest Dr.
Richmond, VA 23226
cleo.scott@richmond.edu
757-284-7494

WRITING SAMPLE

This memo was prepared for the first year required Legal Analysis & Writing course. We were asked to write a formal memo analyzing whether Best Manufacturing's disclaimer in their draft sales agreement was effective under New York law.

Cleo-Symone Scott

MEMORANDUM

To: Adele Kaufman, Esq.
From: Cleo-Symone Scott
Date: October 25, 2021
Re: Best Manufacturing, LLC – Assessment of Implied Warranties Disclaimer

I. Question Presented

Under New York law governing disclaimers of the implied warranties of merchantability and fitness for a particular purpose, is Best Manufacturing, LLC's disclaimer in their draft sales agreement effective when it is located in the boilerplate on the second page of the agreement; it's the only provision in all-capitalized letters, but it is otherwise the same size, color, and typeface as the surrounding text; there is no notice provision in the agreement directing the buyer to the disclaimer; it is borderless; and other portions of the agreement are better highlighted than the disclaimer itself?

II. Brief Answer

No, a court is not likely to hold that Best Manufacturing's disclaimer is effective. A disclaimer is effective when it is in writing, mentions the word "merchantability," and is conspicuous. Best Manufacturing's disclaimer is in writing and mentions the word "merchantability." However, it is not conspicuous because it does not sufficiently contrast with the surrounding text. A court is likely to find Best's disclaimer does not sufficiently contrast because it is in the middle of the boilerplate instead of a prominent location like the first page or above the signatures and, while it is the only boilerplate provision in all caps, it is otherwise in the same small, size, font, bolding pattern and color as the rest of the second page. Further, there is no notice provision or border calling attention to the provision and other provisions on the first

Cleo-Symone Scott

and third page are better highlighted than the disclaimer. Thus, because a court is not likely to find that the disclaimer is conspicuous, it is not likely to find that the disclaimer is effective.

III. Statement of Facts

Our client, Best Manufacturing, has asked us to review a three-page form sales agreement draft that it plans to use for its major transactions. Pages one and three of the agreement are in 12-point font and contain the terms of the sale. The disclaimer appears a third of the way down on page two. The entire second page is boilerplate text and is printed in 8-point Times New Roman font. The disclaimer states: “**DISCLAIMER. SELLER MAKES NO WARRANTY OF MERCHANTABILITY OF THE GOODS OR OF THE FITNESS OF THE GOODS FOR ANY PURPOSE.**” The disclaimer is the only provision that is entirely capitalized, but it is otherwise the same size, color, typeface, and bolding pattern as all the other provisions on the second page. There is no notice provision anywhere in the agreement directing the buyer to view the disclaimer and there is no border around the disclaimer. Also, other portions of the sales agreement are better highlighted than the disclaimer such as the Failure to Close provision on the first page and the Description of the Goods provision on page three. The Failure to Close provision is entirely capitalized and bolded, surrounded by a border, and the buyer must initial next to it. Furthermore, the Description of the Goods section is located directly above the signature line, it must be written in by hand, and both parties must initial next to it.

IV. Discussion

New York implies the warranties of merchantability and fitness for a particular purpose to the sale of all goods within the state. N.Y. U.C.C. Law §§ 2-314,-315 (McKinney 2021). New York permits sellers of goods to exclude these warranties with a proper disclaimer provision. *Id.* § 2-316. To exclude both warranties, sellers must include a disclaimer in their sales agreement

Cleo-Symone Scott

that is in writing, mentions the word “merchantability,” and is conspicuous. *Id.* Since Best Manufacturing’s disclaimer is in writing and mentions the word “merchantability,” the only remaining issue is whether Best Manufacturing’s warranty disclaimer is conspicuous.

A court is likely to conclude that Best Manufacturing’s disclaimer is not conspicuous. A disclaimer is conspicuous when a reasonable person ought to notice the provision. *Id.* § 1-201(a)(10). A reasonable person ought to notice the disclaimer when it sufficiently contrasts with the surrounding text. *See Com. Credit Corp. v. CYC Realty, Inc.*, 477 N.Y.S.2d 842, 844 (App. Div. 1984). When assessing whether the disclaimer sufficiently contrasts with the surrounding text, a court will examine a number of factors including the location of the disclaimer within the document; the textual characteristics of the disclaimer and the surrounding text; whether the document includes a notice provision directing the reader to the disclaimer; whether there is a border around the disclaimer; and the extent to which other portions of the agreement are highlighted more than the disclaimer. *See, e.g., Travelers Ins. Cos. v. Howard E. Conrad, Inc.*, 649 N.Y.S.2d 586, 587 (App. Div. 1996); *Con Tel Credit Corp. v. Mr. Jay Appliances & TV, Inc.*, 513 N.Y.S.2d 166, 166 (App. Div. 1987); *Victor v. Mammana*, 422 N.Y.S.2d 350, 351 (Sup. Ct. 1979).

In cases where the court held that the disclaimer sufficiently contrasted with the surrounding text such that a reasonable person ought to notice it, the court held that the disclaimer was conspicuous. For example, in *Travelers Insurance Cos. v. Howard E. Conrad, Inc.*, 649 N.Y.S.2d 586, 587 (App. Div. 1996), the court held that the disclaimer sufficiently contrasted with the surrounding text when, even though it was located on the back of the agreement, it was in a larger font than the surrounding text on the back page and in capital letters. The agreement also contained a notice provision in red capital letters on the front page

Cleo-Symone Scott

directly above the buyer's signature that signaled the buyer to view the disclaimer on the back. *Id.* Similarly, in *Con Tel Credit Corp. v. Mr. Jay Appliances & TV, Inc.*, 513 N.Y.S.2d 166, 167 (App. Div. 1987), the court held that the disclaimer sufficiently contrasted with the surrounding text when it was located on the front page directly above the signature line and was the only bold print on that page. Additionally, in *Commercial Credit Corp. v. CYC Realty, Inc.*, 477 N.Y.S.2d 842, 844 (App. Div. 1984), the court held that the disclaimer sufficiently contrasted with the surrounding text when it appeared on the front of the agreement directly above the signatures and not on the boilerplate elsewhere in the agreement and was the only boldface print on the front page.

In contrast, in cases where the court held that the disclaimer did not sufficiently contrast with the surrounding text such that a reasonable person ought to notice it, the court held that the disclaimer was not conspicuous. For example, in *Mill Printing & Lithographing Corp. v. Solid Waste Management Systems, Inc.*, 409 N.Y.S.2d 257, 258 (App. Div. 1978), the court held that the disclaimer did not sufficiently contrast when it was printed in the same size, color, and typeface as the surrounding text. Similarly, in *Lupa v. Jock's*, 500 N.Y.S.2d 962, 963 (Oswego City Ct. 1986), the court held that the disclaimer did not sufficiently contrast when it was located on the back of the agreement and, even though it was in bold print and there was a notice provision on the front directing the reader to the disclaimer, the entire back page was printed in such a light texture that it was difficult to read. Thus, the court found that none of the provisions on the back page, including the disclaimer, contrasted with the surrounding text. *Id.* Moreover, in *Victor v. Mammana*, 422 N.Y.S.2d 350, 351 (Sup. Ct. 1979), the court held that the disclaimer did not sufficiently contrast when it was located on a can label and although it was under the all capitalized "WARRANTY" heading, it was otherwise in the same small print as the surrounding

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text. Additionally, there was no border around the disclaimer and other portions of the label were better highlighted, such as the well-marked product name and the danger warning. *Id.*

In Best Manufacturing's draft sales agreement, the disclaimer is located on the second of three pages. The entire second page is boilerplate text and is printed in smaller 8-point font than the 12-point font on the first and third pages. Additionally, while the disclaimer is the only provision in all capital lettering, it is in the same size, color, typeface, and bolding pattern as the surrounding text. Moreover, there is no notice provision in the agreement directing readers to view the disclaimer and there is no border around the disclaimer. Also, other portions of the sales agreement are better highlighted than the disclaimer such as the Failure to Close provision on the first page and the Description of the Goods provision on page three. The Failure to Close provision is better highlighted than the disclaimer because it is entirely capitalized, bolded, surrounded by a border, and the reader must initial next to it. Furthermore, the Description of the Goods sections is better highlighted than the disclaimer because it is located directly above the signature line, a party must write the description in by hand, and both parties must initial next to it. Based on these facts, a court is likely to hold that Best Manufacturing's disclaimer does not sufficiently contrast with the surrounding text, much like the disclaimers in *Mill*, 409 N.Y.S.2d at 258, *Lupa*, 500 N.Y.S.2d at 963, and *Victor*, 422 N.Y.S.2d at 351.

For example, in *Mill*, the court found that the disclaimer did not sufficiently contrast when it was printed in the same size, color, and typeface as the surrounding text. 409 N.Y.S.2d at 258. Similarly, Best Manufacturing's disclaimer, while the only provision that is entirely capitalized, is printed in the same size, color, typeface, and bolding pattern as the surrounding text. Likewise, in *Lupa*, the court found that the disclaimer did not sufficiently contrast, even though it was in bold print and there was a notice provision on the front of the agreement,

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because the entire page where the disclaimer was located was printed in such a light texture that all the provisions on that page were difficult to read and barely legible. 500 N.Y.S.2d at 963. Similarly, all provisions on the second page of Best Manufacturing's agreement, including the disclaimer, are all printed in a small 8-point font which makes all provisions on the second page of the agreement difficult to read. This prevents the disclaimer from sufficiently contrasting with the other text in the agreement. Further, Best Manufacturing's disclaimer lacked the differential bolding and notice provision that the Lupa court held was still insufficient to make the disclaimer contrast. Furthermore, in *Victor*, the court held that the disclaimer on a can label did not sufficiently contrast although it was under the all capitalized "WARRANTY" heading, because it was otherwise in the same small print as the surrounding text. 422 N.Y.S.2d at 351. Additionally, there was no border around the disclaimer and other portions of the label were better highlighted including the well-marked product name and the danger warning. *Id.* Likewise, Best Manufacturing's disclaimer, although entirely capitalized, is in the same small font as the rest of the text on the second page and there is no border around it. Further, other provisions in Best Manufacturing's sales agreement are better highlighted than the disclaimer such as the Failure to Close provision, located on page one, and the Description of the Goods provision, located on page three.

Best Manufacturing's disclaimer differs from the disclaimers that sufficiently contrasted in *Travelers*, 649 N.Y.S.2d at 587, *Con Tel*, 513 N.Y.S.2d at 167, and *Commercial Credit*, 477 N.Y.S.2d at 844. In *Travelers*, the court held that the disclaimer sufficiently contrasted with the surrounding text when, even though it was located on the back of the agreement, it was in a larger font than the surrounding text on the back page and in capital letters. 649 N.Y.S.2d at 587. The agreement also contained a notice provision that signaled the buyer to view the disclaimer

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on the back. *Id.* Best Manufacturing’s disclaimer is also on the back and in capital letters. However, unlike *Travelers*, it is not in a larger font than the surrounding text and does not contain a notice provision anywhere in the agreement. *See id.* Furthermore, in both *Con Tel* and *Commercial Credit*, the courts held that the disclaimers sufficiently contrasted with the surrounding text when they were on the face of the agreement, directly above the signature line, and were the only boldface print on the front page. *Con Tel*, 513 N.Y.S.2d at 167; *Commercial*, 477 N.Y.S.2d at 844. Unlike those cases, Best Manufacturing’s disclaimer is located on the back of the first page in the boilerplate, not on the front page or above the signature line. Additionally, it is in the same bolding pattern as the other provisions on the second page where it is located.

A court is likely to find that Best Manufacturing’s disclaimer does not sufficiently contrast with the surrounding text and, therefore, is not conspicuous.

V. Conclusion

A court assessing Best Manufacturing’s disclaimer of the implied warranties of merchantability and fitness for a particular purpose is likely to find that it is not effective. Although the disclaimer is in writing and contains the word “merchantability,” the court is likely to find that it is not conspicuous because the disclaimer does not sufficiently contrast with the surrounding text. Best Manufacturing has a number of options to choose from when amending its agreement to ensure the disclaimer contrasts. I recommend one of the following:

- **Option 1:** Leave the disclaimer on the second page in all-capitalized lettering but put it in 12-point font with a border around the entirety of it. Additionally, put the entire disclaimer in a red, bolded font and place a box next to the disclaimer for the buyer’s signature. Further, a notice provision can be added to the first page of the document directing the buyer to the disclaimer.